



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

# INDEX.

---

**ABATEMENT** See **PLEADING**, 14-17.

**ABSENTEES.** See **ACTION**, 1.

**ACCOMPlice.** See **CRIMINAL LAW**, 15.

**ACCORD AND SATISFACTION.**

1. Must be fully executed. *Bragg v. Pierce*, 562.
2. When an accord is executory. *Id.*

**ACCOUNT.** See **EQUITY**, 12, 20; **EXECUTORS AND ADMINISTRATORS**, 4, 5, 10.

**ACCOUNT-BOOKS.** See **EVIDENCE**, II.

**ACCOUNT STATED.**

What will not amount to, between principal and factor. *Cartwright v. Green*, 435.

**ACKNOWLEDGMENT.**

Where a copy of a lease was duly certified to have been acknowledged before a magistrate, and recorded with the mortgage under the Act of 27th April 1855, respecting chattel mortgages, it was held, that, in the absence of evidence of fraud, and where the question was not upon the execution and delivery of the lease, the certificate could not be contradicted by parol evidence. *Creighton v. Ladley*, 359.

**ACTION.** See **BANKRUPTCY**, 3; **BILLS AND NOTES**, 6; **DECEIT**.

1. **ACTIONS AGAINST NON-RESIDENTS AND ABSENTEES**, 1.

2. The commonwealth may maintain a civil action for its own use for damages against a sheriff for breach of his official bond by negligence in arresting a party charged with crime, or by wilfully taking insufficient security from such party for his appearance. *Comm'th. v. Reed*, 162.

3. Right of state to bring civil action against its own officers, for neglect.

*Note to Comm'th. v. Reed*, 162.

4. A town cannot bring, for fraudulent pretence in obtaining a judgment against it, while such judgment is in full force. *Hillsborough v. Nichols*, 313.

5. Effect of conspiracy in such case. *Id.*

6. One primarily liable, may be sued for benefit of another secondarily liable, who has paid the debt. *Express Co. v. Haggard*, 118.

7. A statute giving an action, vests an interest in party aggrieved. *Palen v. Johnson*, 127.

8. For injury causing almost immediate death survives to administrator. *Bancroft v. Railroad Co.*, 61.

9. Right to recover damages for fraudulent conversion of property by officer of a bank is assignable. *Grocers' Bank v. Clark*, 774.

10. Decree dismissing bill not on merits, no bar to subsequent action. *Hughes v. U. S.*, 635.

11. On the case, for the legal part of consideration of a note. *Peckes v. Kenniston*, 313.

## ACTS OF CONGRESS.

- 1789, Sept. 24. See **ADMIRALTY**, 3.
- 1833, c. 57, s. 3. See **OFFICER**, 2.
- 1852, Aug. 30. See **STEAMBOATS**, 1.
- 1861, July 13. See **INTEREST**, 1.
- 1862, Feb. 25. See **CONSTITUTIONAL LAW**, I.
- 1862, July 2. See **ATTORNEY**, 8.
- 1863, March 3. See **CONSTITUTIONAL LAW**, 38.
- 1863, March 3. See **HABEAS CORPUS**, 5.
- 1864, June 3. See **CONSTITUTIONAL LAW**, II.
- 1864, June 30. See **STAMPS**.
- 1865, Jan. 24. See **ATTORNEYS**, 1-3, 9.
- 1865, March 3. See **STAMPS**.
- 1867, March 2. See **BANKRUPTCY**, 1, 3.

**ADMINISTRATOR.** See **EXECUTOR**.

**ADMIRALTY.** See **CONSTITUTIONAL LAW**, 39.

1. The Federal courts have jurisdiction in admiralty in cases of collision between steamboats on the navigable rivers of the United States, even though the collision occurs above tide-water. *Steamboat Hine v. Trevor*, 586.

2. Such collisions, where the remedy is by a direct proceeding against the vessel and not against the owners, constitute causes of admiralty cognisance. *Id.*

3. By the 9th section of the Act of Congress of September 24th 1789, the jurisdiction of the District Courts of the United States is *exclusive*, except where the common law is competent to give a remedy. *Id.*

4. A state statute authorizing in cases of collision between steamboats on navigable rivers, a proceeding in the state courts against the vessel by name, its seizure and sale to satisfy any liability that may be established, is in conflict with the constitutional legislation of Congress conferring admiralty on the District Courts of the United States. In such cases the state courts cannot exercise a concurrent jurisdiction; and the common law is not competent to give such a remedy. *Id.*

5. The history of the adjudications of the Supreme Court of the United States on the subject of admiralty jurisdiction reviewed, and the principles established by that tribunal, stated by **MILLER**, J. *Id.*

6. Contract for transportation of passengers on the ocean, is a maritime contract. *The Moses Taylor*, 630.

7. The distinguishing feature of a suit in admiralty. *Id.*

8. Use of depositions in, taken in another suit concerning same subject-matter. *Rutherford v. Geddes*, 435.

9. When only can be read. *Id.*

**ADMISSION.** See **BILLS AND NOTES**, 25; **EVIDENCE**, I.

Negotiations as an admission by an executor, that a claim remained open for settlement. *Calanan v. McClure*, 562.

**ADMIXTURE.** See **TENANTS IN COMMON**, 3, 4; **VENDOR AND PURCHASER**, 30.

**ADULTERY.** See **CRIMINAL LAW**, 18.

**ADVERSE USER.** See **EASEMENT**.

**AGENT.** See **ACCOUNT STATED**; **BILLS AND NOTES**, 10; **HUSBAND AND WIFE**, 23, 24; **INSURANCE**, 8, 10, 20.

1. When liable to purchaser for fraud practised by him in sale of chattels. *Gutchess v. Whiting*, 60.

2. Exceeding his powers becomes principal and acquires rights of one. *Kent v. Bornstein*, 503.

3. Right to recover money given for counterfeit bill. *Id.*

4. His duty to disclose his agency. Failure will make him personally liable to persons unaware of it. *Baldwin v. Leonard*, 563.

5. Knowledge of agency by one partner, not constructive knowledge by his firm. *Id.*

6. Personal liability of agent in such case. *Id.*

**AGENT.**

7. What ratification of unauthorized acts, necessary to make them binding on principal. *Combs v. Scott*, 563.
8. Authority of factor to bind principal. *Easton v. Clark*, 313.
9. When no title passes, upon transfer of property by agent. *Id.*
10. When principal not bound by agent's receipt and use of purchase-money. *Id.*
11. To sign, draw, and indorse notes and bills, has not implied authority to use principal's name in joint transactions with others. *Bank v. Schaumburg*, 246.
12. Notice of the extent of agent's authority. *Id.*

**AGREEMENT.** See **FRAUDS, STATUTE OF**, 3, 4.

Construction and validity of, for purchase of real estate. *De Beerski v. Paige*, 564.

**ALIMONY.** See **HUSBAND AND WIFE**, 8-11.**ALLUVION.**

Upon what the right to, depends. *Saulet v. Shepherd*, 630.

**ALTERATION.** See **MORTGAGE**, 7.**AMENDMEMT.** See **APPEAL**.

1. New counts relate to the commencement of the suit. *Dana v. McClure*, 564.
2. Authority of County Court to allow new counts. *Id.*
3. New count must be for the same cause of action. *Id.*
4. When a new count, declaring specially on a witnessed note, not new cause of action. *Id.*
5. Bar by the statute is a reason for allowing amendment, not for its refusal. *Id.*
6. Statute operates only on the remedy, it does not affect the indebtedness, forming cause of action. *Id.*

**ANCESTOR, COVENANT OF.** See **HEIR**.**APPEAL.**

What is matter of discretion in amendment and not appealable. *Sayre v. Frazer*, 436.

**APPEARANCE.**

Application by defendant for order for time to answer, amounts to an appearance. *Ayres v. R. R. Co.*, 773.

**APPLICATION OF PAYMENTS.** See **DEBTOR AND CREDITOR**, 32.**ARBITRATION.** See **HUSBAND AND WIFE**, 23.**ARREST.** See **BANKRUPTCY**, 3; **DEBTOR AND CREDITOR**, 31.**ASSESSOR.** See **OFFICER**, 1.**ASSETS.** See **HEIR**.**ASSIGNEES.** See **BANKRUPTCY**, 3; **DEBTOR AND CREDITOR**, III.; **LIMITATIONS**, 10-12.**ASSIGNMENT.** See **DEBTOR AND CREDITOR**, III.; **EVIDENCE**, 9-12.

1. Of a right of action to sue for a wrong, against public policy and void. So of a mere release of assignee's right. *Davis v. Herndon*, 504.
2. Assignment of a chattel, held adversely by another, is void. *Brown v. Lipscomb*, 504.
3. What equities, assignee of chose in action, takes subject to. *Downes v. Bank*, 448.
4. General rule in reference to equitable assignments. *Id.*

**ASSUMPSIT.**

1. Where a physician renders professional services to a married woman at her request, and expressly upon her credit, while she is living apart from her

## ASSUMPSIT.

husband, he cannot afterwards recover in *assumpsit* against the husband. *Carter v. Howard*, 411.

2. Promise to pay voluntary subscription binding, though no promisee named. *Comstock v. Howe*, 314.
3. How collected. *Id.*
4. Admission of plaintiff's testimony, to vary charge in his books. *Folsom v. Skofield*, 564.
5. Action to recover for nails borrowed. *Carr v. McDonald*, 565.

## ATTACHMENT.

When a subsequent attachment-creditor may move for discharge of attachment, in a prior suit. *Isham v. Ketchum*, 125.

## ATTORNEY. See MANDAMUS, 3. WITNESS, 11.

1. The Act of Congress of January 24th, 1865, prescribing an oath to be taken by attorneys, is unconstitutional as applied to attorneys of this court who were admitted before the passage of the act. *Ex parte Garland*, 284.
2. Even if the act were constitutional, the oath could not be exacted from an attorney who has been pardoned by the President for all offences arising from participation in the rebellion. *Id.*
3. By the minority of the court, that the Act of Congress of January 24th 1865, prescribing an oath to be taken by attorneys, is *not* unconstitutional, nor is it void as being either a bill of attainder or an *ex post facto* law, its purpose being to require loyalty as one of the *qualifications* of those who practise law in the national courts, and not to impose a punishment for past acts of disloyalty. *Ex parte Garland*, *Cummings v. State*, *Dissenting opinion*, 394.
4. The provisions of the National Constitution forbidding Congress and the states from passing bills of attainder and *ex post facto* laws, discussed, illustrated, and applied, by MILLER, J. *Id.*
5. Status and rights of. *Ex parte Law—Note to Ex parte Garland*, 410.
6. Act of Congress prescribing test oath, unconstitutional. *Id.*
7. Constitutionality of act of West Virginia prescribing oath for practising attorneys. *Ex parte Hunter—Note to Ex parte Garland*, 410.
8. This court has an inherent right to regulate the terms upon which attorneys shall be admitted to its bar. It had, therefore, the right to prescribe as a qualification for admission to its bar, the taking of an oath similar to that established by the Act of Congress of July 2d 1862, for officers of the United States. *Ex parte Magruder*, 292.
9. The decision of the Supreme Court of the United States, in *Ex parte Garland*, that the Act of Congress of January 24th 1865, is unconstitutional, does not entitle a person to admission to the bar of the Court of Claims without taking the oath prescribed by the rules of the court. *Id.*
10. Effect of demand by an attorney, of a certain sum as compensation, upon recovery of greater amount. *Miller v. Beal*, 713.
11. Liability of, employed to collect a note. *Braine v. Spaulding*, 630.

## BANKRUPTCY.

1. CONSTITUTIONALITY OF EXEMPTION CLAUSE IN THE ACT OF 1867, 721.
2. The Bankrupt Act of 1867 suspends all action upon future cases arising under the insolvent laws of the states where the laws act upon the same subject-matter and the same persons. *Commonwealth ex rel. Millingar v. O'Hara*, 765.
3. The Bankrupt Act suspends all proceedings under the Pennsylvania Act of 12th July 1842, for the abolition of imprisonment for debt and the punishment of fraudulent debtors, where the latter act operates on the same subject-matter and upon the same persons as the former. *Id.*
4. Where there is no conflict with the claims of domestic creditors, the assignees of a foreign bankrupt may sue in the United States courts for property of their bankrupt. *Hunt v. Jackson*, 169.
4. *Quere*, To whom property fraudulently omitted from schedule, belongs. *Edwards v. Gibbs*, 503.

## BANKRUPTCY.

5. Bill to annul bankrupt's discharge for fraud. *Edwards v. Gibbs*, 503.  
 6. Wilful omission from schedule of a vested remainder, will vitiate discharge. *Id.*

## BANKS. See ACTION, 9; CONSTITUTIONAL LAW, II.; SURETY, 7.

1. Agreement in regard to safe keeping of deposit book, part of contract between plaintiff and bank. *Heath v. Savings Bank*, 246.  
 2. Right of depositor to recover, after loss of book. *Id.*  
 3. Liability of teller and his security for due-bills, issued to raise money for himself. *Wayne v. Bank*, 631.  
 4. When bank receiving notes from its depositors for collection, is responsible for the negligence of its notary. *Gerhardt v. Saving Institution*, 247.

## BEQUEST. See CHARITABLE USE.

## BIGAMY. See CRIMINAL LAW, 3.

## BILLS AND NOTES. See CONTRACT, 2, 3; DEBTOR AND CREDITOR, 5; EVIDENCE, 27-29; MORTGAGE, 14; SURETY, 6.

I. *What is a Negotiable Instrument.*

1. Warrants drawn by the proper officers of a municipal corporation on the treasurer thereof, are not bills of exchange, but are, in legal effect, the promissory notes of the corporation. *Clarke v. City of Des Moines*, 146.  
 2. Note for a sum certain, payable in Michigan "with current exchange on New York" is a negotiable promissory note. *Johnson v. Frisbie*, 631.  
 3. Contingency, which does not destroy negotiability. *Smilie v. Stevens*, 713.  
 4. Instrument payable "on return of this certificate," negotiable. *Id.*  
 5. Otherwise, when providing for return of a separate instrument. *Id.*  
 6. Plaintiff's right to sue in his own name, in such case. *Id.*

II. *Consideration.*

7. A party who gives up to his debtor his note or check past due and dishonored, for the note or check of a third person, is not in the same position as before the transaction, and is therefore a holder for value of the check received. *McBride v. Dorman*, 736.

8. Where a person, in consideration of receiving from his debtor the note of a third person, gives up a note of his debtor which is past due, it is equivalent to an agreement on his part to cancel the existing indebtedness and to rely thereafter upon the obligation which he has taken in its stead. *Id.*

9. No failure in consideration of, given for slave, with warranty of his slavery for life, by reason of ordinance abolishing slavery. *Phillips v. Evans*, 248.

III. *Rights and Liabilities of Parties.*

10. When commercial paper is pledged by the apparent owner before it matures, as collateral security for advances, the pledgee in good faith is entitled to hold it for the amount of such advances, though it turns out afterwards that the party making the pledge was a mere agent for the true owner, and that the transaction was a breach of duty to the principal. *Belmont Branch Bank v. Hoge*, 227.

11. The title of one who for full value receives a transfer of negotiable paper before maturity, and without notice of any outstanding or antecedent equities, is not subject to be defeated by proof that he might have obtained such notice by the exercise of active vigilance. *Id.*

12. The fact that paper is transferred by a corporation, to secure advances at a rate of interest exceeding seven per cent., does not tend to impeach the good faith of the transferree, such a contract being no longer illegal. *Id.*

13. Chapter 172 of the laws of 1850 operated *pro tanto* as a repeal of the statutes prohibiting usury, so far as they were applicable to stipulations for a rate of interest exceeding seven per cent., where a corporation is the borrower. *Id.*

14. Presumption, when names of payee and another person, former above latter, are on back of a note. *Sturtevant v. Randall*, 565.

## BILLS AND NOTES.

15. One placing name in blank on back of note, may show his connection with such note by parol. *Sturtevant v. Randall*, 565.
16. Judgment finding a person to be an original promisor, estops him from denying same in litigation with other parties on note. *Id.*
17. Rights of bona fide holders without notice. *Hoge v. Lansing*, 314.
18. Knowledge subsequently acquired will not affect. *Id.*
19. What is necessary to make a bona fide holder. *Bright v. Judson*, 436.
20. Cannot recover on acceptance obtained by fraud. *Id.*
21. What will amount to evidence of sale of a note. *Barney v. Clark*, 445.

## IV. Demand and Notice.

22. Waiver of demand implies waiver of protest and notice. *Jaccard v. Anderson*, 57.
23. What "waiver of protest" implies. *Id.*
24. Agreement of waiver must be made between holder and indorsees to be charged. *Id.*
25. When admission of liability by indorsees will not overcome want of demand and notice. *Gawtry v. Doane*, 714.
26. What will not amount to a waiver of the objection of want of demand and notice. *Id.*
27. Waiver by indorser of presentation and protest. *Braine v. Spalding*, 630.
28. What is sufficient notice to indorser. *Wood v. Watson*, 566.
29. When notarial certificate evidence of facts stated therein. *Bank v. Gregory*, 57.

## V. Damages.

30. Damages on dishonored bill on London. *Wood v. Watson*, 566.
31. Rule thereof cannot be varied, on account of depreciation of currency. *Id.*

## VI. By what Law to be governed.

32. A bill of exchange is to be governed by the laws of the state, where it is payable. *Bright v. Judson*, 436.

## BILL OF EXCEPTION. See EXCEPTION.

## BILL OF LADING. See SHIPPING.

How far may be explained by parol. *Note to Strong v. Railway Co.*, 690.

## BLANKS. See BOND, 1.

## BOND. See EXECUTOR, 8; STAMP, 8; SURETY, 11.

1. Effect of delivery, by obligor, with blanks therein. *South Berwick v. Huntress*, 247.

2. Penal sum may be inserted in such case. *Id.*

3. Irregular execution by one named in, and the witness, may be shown by parol, and former held liable. *Richardson v. Boynton*, 314.

## BOUNDARY.

1. Location of and acquiescence in, for more than twenty years, conclusive. *Reed v. Farr*, 314.

2. Is evidence of highest nature. *Id.*

## BOUNTY. See CONSTITUTIONAL LAW, 37.

## BROKER. See REAL ESTATE BROKER; WARRANTY, 5.

## CANALS. See MORRIS CANAL.

1. Under the Internal Improvement Law of 1836 (Ind.) were built for navigation and to furnish hydraulic power. *Edgerton v. Huff*, 720.
2. The owner of the fee may take ice from the canal, if it do not interfere with navigation or use of the water. *Id.*

## CASES APPROVED, OVERRULED, ETC.

- Baldwin *v.* Hale, 1 Wallace 223 and 3 A. L. R. 462, and Same *v.* Bank, 1 Wallace 234, affirmed. *Gilman v. Lockwood*, 632.

## CASES APPROVED, OVERRULED, ETC.

*Chicago v. Robbins*, 2 Black 418, affirmed. *Robbins v. Chicago*, 633.

*Ernst v. Hudson River R. R.*, 24 How. Pr. R. 97, erroneously reported.

*Ernst v. Railroad Co.*, 254.

*Flureau v. Thornhill*, 2 Wm. Bl. 1077, distinguished. *Locke v. Furze*, 45.

*Fuller v. Benjamin*, 23 Me. 255, questioned. *Lawrence v. Rokes*, 249.

*Gelpcke v. Dubuque*, 1 Wall. 175, affirmed. *Mitchell v. Burlington*, 638.

*Havemeyer v. Iowa Co.*, 3 Wall. 294, affirmed. *Id.*

*Joy v. The State*, 13 Ind. 139, overruled. *State v. Walker*, *State v. Nelson*, 716.

*Miller v. The State*, 8 Ind. 326, overruled. *State v. Walker*, 716.

*Mitchell v. Rockland*, 41 Me. 363 and 45 Me. 504, re-affirmed. *Mitchell v. Rockland*, 189.

*Morgan v. The State*, 13 Ind. 215, overruled. *State v. Walker*, 716.

*Rogers v. Burlington*, 3 Wallace 654, affirmed. *Mitchell v. Burlington*, 638.

*Van Allen v. The Assessors*, 3 Wallace 573, s. c. 5 Am. Law Reg. (N. S.) 609, re-affirmed and followed. *Bradley v. The People*, and *The People, &c., ex rel. Duer v. The Commissioners*, 464, 467.

CATTLE. See RAILROAD, 12.

CAVEAT EMPTOR. See VENDOR AND PURCHASER, 13-20.

CERTIFICATE. See STAMP, 9.

CHARITABLE USE,

Bequest for, when good. *Saltenstall v. Sanders*, 184.

CHARTER. See CORPORATIONS, 6-8.

CHATTELS. See MORTGAGE, 15-20.

CHECK. See BILLS AND NOTES, 7, 8.

1. Is fraud to draw on a bank, in which drawer has no funds. *Peterson v. Bank*, 631.

2. Is fraud in holder to present same for payment, when he knows drawer has no funds. *Id.*

3. When deposit of, in bank on which it was drawn, no payment thereof. *Id.*

CHOSE IN ACTION. See ASSIGNMENT.

CITIZENSHIP.

1. Free negroes, born in U. S., are citizens thereof, and may become citizens of a state by residence. *Smith v. Moody*, 714.

2. What constitutes citizenship. Right to vote and hold office, not essential. *Id.*

CODICIL. See WILL, 13.

COLLATERAL SECURITY. See BILLS AND NOTES, 10.

COLLECTOR OF U. S. REVENUE. See STAMPS, 6.

COLLISION. See ADMIRALTY, 1-4; INSURANCE, 19, 20.

When cases of, are of admiralty jurisdiction. *Note to Steamboat v. Trevor*, 596.

COMMERCE. See CONSTITUTIONAL LAW, VI.

COMMISSIONS. See REAL ESTATE BROKER.

COMMON CARRIER. See EXPRESS COMPANY; FERRY COMPANY; RAILROAD, 19-22; REPLEVIN, 3; TELEGRAPH COMPANY.

1. What constitutes a. *Harris v. Roy*, 504.

2. The defendants were common carriers of goods and passengers between New York and New London, by steamers. A delivery of a package to them in New York for transportation, marked for a point beyond their route, and the acceptance of the same, implies an obligation to carry according to the

## COMMON CARRIER.

general course and usage of their business ; that is, to the termination of their own route and to deliver to the next carrier in the line of the destination. *Converse v. Transportation Co.*, 214.

3. A contract between two lines of transportation, as to the rate of division between them, of through freight, and which does not create a joint interest either in the profits or the management of the business on the two lines, does not make the first line responsible for transportation across both lines merely because it accepts for transportation a package directed to a point upon the second line. *Id.*

4. Where a railway company and a transportation company use a wharf as a joint depot or station-house for freight, and each delivers freight for the other's line upon a platform at particular points clearly defined and well understood, either company having transported freight across its own line and deposited it in the place agreed for its reception by the other, must be regarded as having completed its duty of transportation and delivery to the next carrier in the line. *Id.*

5. Liability of last connecting railroad for injury to goods before it received them. *Darling v. Railroad Co.*, 58.

6. The liability of first common carrier continues until actual delivery to the next carrier. *Fenner v. Railroad Co.*, 63.

7. Responsibility of carriers of passengers. *Sawyer v. R. R. Co.*, 62.

8. When liable for refusal to carry passenger back to country from which he had been expelled. *Pearson v. Duane*, 631.

9. Circumstances mitigating the damages in such case. *Id.*

10. Bound by law to receive and carry goods, under his common-law responsibility. Cannot refuse because shipper will not assent to a special contract. *Express Co. v. Moon*, 504.

11. His right to limit his common-law liability by special contract. What is required to make such a contract. *Id.*

12. Such limitations cannot extend to his own negligence. *Id.*

13. In case of loss, he must show it was occasioned by cause within the exceptions, to escape responsibility. *Id.*

14. Extent of his common-law responsibility. *Id.*

15. Right of carrier delivering goods to a warehouseman, to reclaim same, when goods never called for. *Hamilton v. Nickerson*, 58.

16. Carrier not liable, if the negligence of the conductor, or his want of care and foresight, was not the proximate or remote cause of accident and injury. *Sawyer v. R. R. Co.*, 63.

## COMMON LAW. See COURTS, 5.

1. ITS ORIGIN, HISTORY, AND GENERAL PRINCIPLES, 65.

2. ITS APPLICATION IN DETERMINING WHAT ARE CRIMES, AND NATURE AND DEGREE OF PUNISHMENT, 321.

## COMMON SCOLD. See CRIMINAL LAW, IV.

## CONDITION. See COUNTY, 1 ; DEED, 2, 3, 4.

1. Right of reverter, belonging to grantor on condition subsequent, is extinguished by deed to a third person before entry for breach. *Rice v. Railroad Co.*, 320.

2. Grant of homestead, upon condition of residence thereon. Breach thereof. *Hubbard v. Hubbard*, 566.

## CONFEDERATE NOTES. See CONTRACT, 7.

## CONFLICT OF LAWS. See BILLS AND NOTES, 32 ; INTEREST, 4-7.

In cases of voluntary transfers of personal property. *Note to Guillaudet v. Howell*, 527.

## CONSIDERATION. See BILLS AND NOTES, 9 ; CONTRACT, 2, 5, 6 ; CORPORATION, 26 ; DEED, 12 ; REAL ESTATE ; SURETY, 1-3.

## CONSIGNEE. See SHIPPING, 8-13.

## CONSTITUTIONAL LAW. See BANKRUPTCY, 1; HABEAS CORPUS.

I. *United States Notes, Stocks, and Loans.*

1. The fare of a passenger on a railroad is a *debt* within the Acts of Congress called the Legal Tender Acts, although it be demanded and paid before the passenger has been carried any part of the way. *Lewis v. R. R. Co.*, 703.
2. Where a certain sum per mile has been established as the legal fare for carrying a passenger on a railroad, the company is bound to accept payment of the fare in United States notes at their legal value. *Id.*
3. Legal Tender Act of Congress, constitutional. *Carpenter v. Bank*, 448.
4. Legal tender notes valid tender in payment of bills of a state bank. *Id.*
5. Congress may issue treasury notes and make them lawful money and a legal tender. *Shollenberger v. Brinton*, 636.
6. Act of Congress of February 25th 1862, is constitutional. *Id.*
7. A ground-rent is a debt thereunder. *Id.*
8. Ground-rent payable in lawful silver money, redeemable in such notes. *Id.*
9. So half-yearly rent, payable in lawful silver money, each dollar weighing 16 pwt. 6 gr. at least. *Mervine v. Sailor*, 637.
10. So ground-rent payable in lawful money. *Davis v. Burton, Kroener v. Colhoun*, 637.
11. So a certificate of deposit of gold payable in like funds. *Sandford v. Hays*, 637.
12. So a note for sum of money marked “\$14,145 specie.” *Graham v. Marshall*, 637.
13. So a note for “—— dollars in gold.” *Laughlin v. Harvey*, 637.
14. Bond for payment of gold coin of certain fineness, notwithstanding law making anything else legal tender, not payable in greenbacks. *Dutton v. Pailaret*, 637.
15. As a medium of payment no distinction between, and gold coin. *Appel v. Woltman*, 248.
16. Tax may be assessed upon whole amount of the deposits of a savings bank, under stats. 1862, c. 224, and 1863, c. 164, though a portion of its funds invested in U. S. loans. *Comm'th. v. Savings Ins.*, 511.

II. *National Banks.*

17. Shares in national banks can be taxed for state, county, or municipal purposes, only when the state legislation authorizing such taxation conforms to the provisos of the 41st section of the National Bank Act of June 1864. *Bradley v. The People*, 466.
18. The second proviso of the 41st section construed in the case of *Bradley v. The People*, and applied to the laws of Illinois. *The People v. The Comm'r's.*, 467.
19. The first proviso in said section construed and expounded in the case of *The People, &c., ex rel. Duer v. The Commissioners*. *Wright v. Stilz*, 471.
20. Taxation by a state of shares in national banks must conform strictly to the requirements of the National Bank Act of June 1864. *Frazer v. Siebern*, 475.
21. The Statute of Ohio of April 2d 1865, taxing shares in national banks, imposes a higher rate of taxation on such shares than on the shares of banks authorized by the state, and is therefore unconstitutional. *Id.*
22. The subject of taxation of national banks discussed. *Id.*
23. Cases upon the taxation of national banks considered. *Note to Frazer v. Siebern*, 483.
24. The shares of stockholders in national banks can only be taxed by a state, in strict conformity with the provisions of the National Bank Act of June 1864. *Markoe v. Hartranft*, 487.
25. A state law directing the cashiers of all banks, national or state, to collect annually from every stockholder a tax of one per cent. on the par value of the stock held by him, and pay the same into the state treasury, does not conform in the mode of taxation with the requirements of the National Bank Act of June 1864, and is therefore void. *Id.*

## CONSTITUTIONAL LAW.

26. A state has no authority to impose such a duty upon an officer of a national bank. *Markoe v. Hartranft*, 487.

27. An injunction will lie from the Supreme Court of Pennsylvania to restrain the auditor-general and treasurer of the state from collecting a tax under an unconstitutional law. *Id.*

28. Taxation of national banks for their real estate and shares. *Bank v. Portsmouth*, 314.

29. Shares in, whether state or national, taxable by state, though capital invested in U. S. bonds. *Van Allen v. The Assessors, People v. The Commissioners*, 436.

30. Rate of such taxation. *Id.*

III. *Questions relating to the Executive.*

31. President of U. S. cannot be restrained from executing Act of Congress alleged to be unconstitutional. *State of Mississippi v. Johnson*, 632.

32. A bill having such purpose not allowed to be filed. *Id.*

33. Power of Governor of Kentucky to pardon. *Comm'th. v. Ashlock*, 441.

IV. *Questions relating to Legislative Power.* See CORPORATION, 22-24,

34. Cannot tax dividends by domestic corporations due non-resident owners. *Oliver v. Washington Mills*, 58.

35. Power of legislature to tax corporations on the excess of market value of their stock over value of estate and machinery. *Comm'th. v. Gas Light Co.*, 384.

36. Power of legislature to tax corporations upon excess of the market value of its stock over value of its estate. *Comm'th. v. Manuf. Co.*, 437.

37. Where the constitution provides that the corporate authorities of counties, townships, school-districts, cities, towns, and villages, may be vested with power to assess and collect taxes for corporate purposes, such taxes to be uniform in regard to persons and property within the jurisdiction of the body imposing the same, and that the specification of the objects and subjects of taxation shall not deprive the General Assembly of power to require other objects and subjects to be taxed in such manner as may be consistent with the principles of taxation fixed in the constitution, an Act of the General Assembly authorizing the towns in certain counties therein named to levy a tax to pay bounties to persons who should thereafter enlist or be drafted into the army of the United States, a vote of the people of such towns having been first taken, is not unconstitutional. *Taylor v. Thompson*, 174.

V. *Questions relating to Courts and Judicial Power.* See ADMIRALTY, 1-3.

38. The fifth section of the Act of Congress of March 3d 1863, providing for the removal of suits against officers and others for acts done under color of authority of the President or any Act of Congress of the United States, from a state court to the Circuit Court of the United States, is constitutional. *McCormick v. Humphreys*, 552.

39. Ninth section of the Judiciary Act, vesting in the U. S. District Courts exclusive admiralty jurisdiction, is constitutional. *The Moses Taylor*, 630.

40. Construction of local law by State courts, binding on U. S. courts. *Christy v. Pridgeon*, 437.

41. Act, requiring legal process to be stamped, cannot apply constitutionally to writs issued by state courts. *Fifield v. Close*, 639.

VI. *Regulation of Commerce.*

42. The Ordinance of Congress of August 1787, under the Articles of Confederation, for the government of the territory north-west of the Ohio river, is superseded by the Constitution of the United States. *Woodman v. Kilbourn Manuf. Co.*, 238.

43. The United States, under the power to regulate commerce among the several states, have paramount authority over a navigable stream bearing a necessary relation to such commerce. *Id.*

44. In the absence of the exercise of such authority on the part of the United States, the state governments may regulate the navigation of such streams *Id.*

## CONSTITUTIONAL LAW.

45. The people have a right to the use of a navigable stream; but, the legislature, with the object of public improvement and convenience, may appropriate the use of the surplus water to a local purpose. *Woodman v. Kilbourn Manuf. Co.*, 238.

VII. *Obligation of Contracts.*

46. When repeal of an act, exempting swamp lands from taxation, impairs a contract by the state. *McGee v. Mathis*, 437.

47. When power of taxation is a contract and cannot be withdrawn, till contract is satisfied. *Van Hoffman v. Quincy*, 632.

48. A statute subsequently passed, restricting or repealing such powers of taxation, is a nullity. *Id.*

VIII. *Trial by Jury, Process of Law, and Personal Liberty.* See **ESTRAYS**, 1; **MUNICIPAL CORPORATION**, 1; **INFRA**, 60.

49. Authority of military commissions in a state not engaged in rebellion nor invaded, where Federal courts open. *Ex parte Milligan*, 567.

50. Citizen in civil life, could not be tried in Indiana by a military tribunal, for any offence whatever. *Id.*

51. What cases are excepted from necessity of presentment by grand jury and tried by jury. *Id.*

52. Neither President, Congress, nor Judiciary can disturb safeguards of civil liberty except so far as habeas corpus may be suspended. *Id.*

53. Even when privilege of habeas corpus is suspended, citizen can only be tried, convicted, and sentenced by civil courts of law. *Id.*

54. When resident in a loyal state cannot be regarded as a prisoner of war. *Id.*

55. Suspension of the privilege of writ of habeas corpus, does not suspend writ itself. *Id.*

56. Preservation of the right of trial by jury. *Tabor v. Cook*, 632.

IX. *Ex post facto Laws.* See **ATTORNEY**, 1-9.

57. What are retrospective acts and ex post facto laws. *Locke v. New Orleans*, 437.

58. Constitutionality of Missouri test oath. *Cummings v. State*, 291.

X. *Taking Private Property.*

59. Legislature cannot authorize summary confiscation of property as a punishment for a mere trespass. *Rockwell v. Nearing*, 378.

60. What is "due process of law." *Id.*

61. Power of legislature to authorize municipal corporation to take land for widening streets. *Dorgan v. City*, 439.

62. How compensation may be ascertained. *Id.*

63. Surrender of whole estate by owner to corporation in such case. *Id.*

XI. *Freedom of Religion.*

64. Authority of school committee to pass order for reading of Bible, and prayer. *Spiller v. Woburn*, 315.

CONTRACT. See **ADMIRALTY**, 6; **CONSTITUTIONAL LAW**, VII.; **DEBTOR**, 2, 6, 22; **EQUITY**, 1-7; **JUDGMENT**, 8; **SALE**, 13.

1. The plaintiffs agreed to make and erect, on premises under the control of the defendants, certain machinery, and the latter were to provide all necessary brickwork, &c. Before the works were completed, the buildings in which the work was to be done were destroyed by fire:—*Held*, that the plaintiffs were entitled to recover for the amount of work done. It was an implied term of the contract, that the defendant should provide the buildings in which the work was to be done, and enable the plaintiffs to perform their part. *Appleby v. Meyers*, 112.

2. Discounting of new note and payment of former one, thereby extinguishes old debt and creates a new one. *Fisher v. Marvin*, 507.

3. The debt deemed to have been contracted, when new note was given. *Id.*

4. Suit thereon, to make stockholders of corporation liable, in time, within one year after new note became due. *Id.*

## CONTRACT.

5. An agreement to take, in lieu of arrears of income, of a life interest, recoverable in equity, a certain sum, less than the estimated amount of such arrears, recoverable at law, is, in equity, void for want of consideration, and will not be supported. *Lovett v. Hankins*, 52.
6. Agreement to forbear suing, good consideration for third person's promise to pay the debt. *Bank v. Nixon*, 184.
7. Validity of, based upon Confederate treasury notes. *Avera v. Robertson*, 291.
8. In a contract to pay a sum in specified articles, vendee may pay in money or the articles. *White v. Tompkins*, 635.
9. Workmen exonerated from compliance with, by arrest and imprisonment for crime. *Hughes v. Wamsutta Mills*, 58.
10. Validity of agreement that one shall bid for mail contract in behalf of two. *Huntington v. Bardwell*, 315.
11. One interested in mail contract may sign as surety. *Id.*
12. To procure recruits for U. S. Army, not against public policy, may recover a sum agreed to be paid for such services. *Combs v. Scott*, 568.

## CONTRIBUTION.

1. No marshalling of assets between co-legatees, when legacy of one has been taken by title paramount to that of testator. *People v. Horton*, 505.
2. When one of several specific legatees, paying whole of a debt, not entitled to contribution against others. *Id.*

## CONVERSION. See DAMAGES, 2; HUSBAND AND WIFE, 27.

## CORPORATION. See BILLS AND NOTES, 12, 13; CONSTITUTIONAL LAW, 34-36; COURTS, 10, 11; MUNICIPAL CORPORATION; RAILROAD.

## I. General Powers and Liabilities.

1. Whether gas company a public corporation. *Comm'th. v. Gas Light Co.*, 384.
2. Gas-pipes are "machinery" of gas company, under Mass. Stat. 1864, c. 208. *Id.*
3. How far liable for acts of their employees or agents. *R. R. Co. v. Read*, 118.
4. No distinction in Illinois between negligence of the president and directors of corporation and that of their servants or agents. *Id.*
5. Owning land and laying out street near mill and building houses thereon for operatives, not liable for injury from defect in street. *Palmer v. Manuf. Co.*, 382.
6. Charter of an association incorporated by the Supreme Court. *Society v. Comm'th.*, 633.
7. When member bound by charter conferring power of expulsion. *Id.*
8. Sentence of society, acting judicially, cannot be inquired into collaterally. *Id.*
9. Power of expulsion in a society to provide assistance to sick members. *Id.*
10. Transfer of stock when there is no right to make same. *Bayard v. Bank*, 633.
11. Banks and other corporations may demand evidence of authority to transfer stock. *Id.*
12. Transfer of stock by holder of legal title. *Id.*
13. Authority of administrator, executor, and trustee for insolvent to transfer stock. *Id.*

## II. Stockholders and Subscribers to Stock.

14. When company bound to permit transfer of its stock belonging to one indebted to corporation. *Dock Co. v. Heron*, 634.
15. Where a bill in equity is brought against the stockholders of a corporation for the purpose of charging them personally, upon individual liability, for the debt of the corporation, an equitable contribution is to be made by the court between all the stockholders as far as may be. *Erickson v. Nesmith*, 494.

## CORPORATION.

16. The statute of New Hampshire makes the liability of stockholders in manufacturing and many other corporations, joint and several for all such debts of the corporation as they are made personally liable to pay, thus making them liable as though they were partners without any act of incorporation. *Erickson v. Nesmith*, 494.

17. The rule among partners is, if after applying the assets there are still outstanding liabilities, the partners must contribute in proportion to their shares, or if there is a surplus, it will be distributed among them in like proportion. *Id.*

18. Where a bill in chancery is brought against any of the stockholders of a corporation to compel them to pay a debt of the corporation for which they are individually liable, the general rule is, that all persons liable to contribute should be made parties to the bill. *Id.*

19. But this is a rule of convenience and not of necessity, and when persons interested are out of the jurisdiction of the court, and it is so stated in the bill and admitted by the answer or proved, it is not necessary to make them parties, but a decree may be made against those over whom the court has acquired jurisdiction, where it can be done without injustice to those absent. *Id.*

20. And where certain of the stockholders within the jurisdiction are insolvent, the plaintiff may have his decree against such as are solvent for his whole debt, each paying such proportion of the whole debt as his stock bears to the whole amount of stock owned by the solvent stockholders, over whom the court has acquired jurisdiction. *Id.*

21. It is settled law that the business for which a corporation was formed cannot be changed against the will of any stockholder, however large the majority may be in its favor. *Zabriskie v. R. R. Co.*, 420.

22. A clause in a legislative charter of incorporation that the legislature may at any time alter, modify, or repeal the same, does not give the legislature power to change the *purposes* of the corporation. The alteration must be of something contained in the charter, or some franchise conferred by it. *Id.*

23. Such clause is a reservation to the state for the benefit of the public, and to be exercised by the state only. *Id.*

24. Therefore such clause does not enable the legislature, even with the assent of a majority of the stockholders, to change the purposes of the corporation if opposed by any stockholder. *Id.*

25. What is sufficient evidence of acceptance of a subscription to stock. *Seminary v. McDonald*, 119.

26. What is sufficient consideration for promise to pay subscription. *Id.*

27. Subscriber to stock not released, by fraud of agent in procuring same. *Walker v. R. R. Co.* 506.

28. Right to sue for subscription to stock of an existing corporation, where the name imports a corporation authorized by law. *Williams v. Association*, 715.

29. Extent of the rule estopping one contracting with a corporation, from denying its corporate existence. *Id.*

30. When rule does not apply to a suit upon a stock subscription. *Id.*

## COSTS.

1. Of administrative suits. *Note to Crosby v. Mason*, 20.

2. When plaintiff's, properly limited to the first term. *Dana v. Sessions*, 383.

## COUNTS. See AMENDMENT, 1-3.

## COUNTY.

1. Removal of county seat on conditions—submission thereof to electors. *People v. Russell*, 315.

2. New county cannot be created with a single town. *People v. Maynard*, 634.

## COURTS. See CONSTITUTIONAL LAW, V.; CRIMINAL LAW, 12-14; HUSBAND AND WIFE, I.; JURISDICTION, 2; PROHIBITION, 2.

## I. In General.

1. An order of attachment, issued by the clerk of the court, on an insuffi-

## COURTS.

cient affidavit, is in effect "*coram non judice*," and therefore void, for the want of jurisdiction. *Amsinck v. Harris*, 100.

2. Where such an order is dismissed, or vacated by the court, the rule applicable to other judicial proceedings, where courts will not take jurisdiction, applies. *Id.*

3. Therefore the dismissal of the order does not prevent a subsequent arrest for the same cause of action; the maxim "*bis vexari*" does not apply. A proceeding instituted where no jurisdiction exists, being void, it cannot be held to forbid another proceeding, neither as a bar or in abatement. *Id.*

4. Defendant must be notified of pendency of suit, to give jurisdiction. *Railroad, Co. v. Weeks*, 188.

II. *Of the United States.*

5. HAVE THEY A COMMON LAW CRIMINAL JURISDICTION? 129.

6. What record must show, in a case removed from a state court under Judiciary Act, to Supreme Court of United States. *Railroad Co. v. Rock*, 444.

7. Jurisdiction of United States Supreme Court in such case. *Id.*

8. United States Supreme Court cannot re-examine judgment in Circuit Court, just equalling the sum of \$2000. *Walker v. U. S.*, 445.

9. Removal of cause into United States Circuit Court under Act of Congress of 1789. *Ayres v. R. R.*, 719.

10. Action by one foreign corporation against another cannot be removed. *Id.*

11. *Aliter*, where action is by assignee of a foreign corporation, who is a citizen of the state. *Id.*

## COVENANT. See HEIR; LANDLORD AND TENANT, 8; REAL ESTATE, 2.

1. Not implied by designation of ground in a plan referred to in a deed. *Light v. Goddard*, 185.

2. Effect of want of notice of an existing suit against the principal, where covenant one of general indemnity against claims and suits. *Insurance Co. v. Wilson*, 127.

3. A covenantee vouched to defend against an adverse title, may vouch his grantor to defend in the same suit. *Chamberlain v. Preble*, 128.

4. One duly vouched, but not appearing, to defend title, will be bound by result. *Id.*

## CRIMINAL LAW. See COURTS, 5; EVIDENCE, 24, 25.

I. *In General.*

1. HOW FAR COMMON LAW IS APPLIED IN DETERMINING WHAT CONSTITUTES A CRIME, 65, 129, 321.

2. Indictment must show a fact necessary to give jurisdiction. *Houser v. The People*, 119.

3. Not sufficient to state it in caption. *Id.*

4. Omission thereof is defect of substance. *Id.*

5. Indictment and commencement of trial, which was subsequently abandoned, without going to the jury, not a bar to second indictment. *Ferris v. The People*, 773.

6. When discharge of jury is equivalent to a verdict of not guilty. *State v. Walker*, 716.

7. It is a good cause for discharge, if jury be unable to agree, after ample time given for consultation. *Id.*

8. Court justified in discharging jury which had been out nineteen hours, with no possibility of agreement. *Id.*

9. Such discharge of jury does not entitle defendant to discharge, because once in peril. *State v. Nelson*, 716.

10. Mere fact that the sheriff has expressed an opinion as to guilt of prisoner, not sufficient ground for challenge to the array. *Ferris v. The People*, 773.

11. Nor that the court excused 764 out of a panel of 1000 jurors, without cause. *Id.*

## CRIMINAL LAW.

12. When state court will not discharge one convicted of crime, though writ of error has been issued by Supreme Court of United States. *Fleming v. Clark*, 438.

13. When writ of error from Supreme Court of United States in a criminal case, will operate as a supersedeas. *Bryan v. Bates*, 438.

14. Discharge of prisoner on habeas corpus, in such case. *Id.*

15. Declarations of one accomplice as evidence against the other. *People v. Pitcher*, 634.

16. Warrant of execution from Supreme Court in New York, when convict not executed according to sentence. *Ferris's Case*, 377.

17. Informality therein. *Id.*

## II. Adultery.

18. Marriage in good faith with woman whose former husband is not really dead, though supposed to be, is adultery. *Comm'th. v. Thompson*, 60.

## III. Bigamy.

19. When second marriage by one, who had married another under the age of consent, is bigamy. *People v. Slack*, 318.

## IV. Common Scold.

20. A common scold is indictable in Pennsylvania. *Comm'th. v. Mohn*, 634.

21. Offence of "common scold" saved by 178th section of Revised Penal Code. *Id.*

22. How offence sufficiently described in the indictment. *Id.*

## V. False Pretence.

23. What an indictment must state. *Thomas v. The People*, 119.

## VI. Larceny.

24. If servant of a railway corporation, having charge of passenger-tickets, once sold and taken up, fraudulent resells same, it is larceny thereof. *Eaton v. Farmer*, 256.

25. What will sustain indictment for larceny. *Comm'th. v. Collins*, 438.

## VII. Murder.

26. Evidence on trial for murder. *People v. Fernandez*, 247.

27. Stains of blood on person and clothing are among ordinary indicia of homicide. *Id.*

28. Proof of matters of common observation. *Id.*

29. Testimony of chemist, analyzing blood. *Id.*

30. Clothes worn by accused, properly submitted to jury. *Id.*

31. When deceased's declarations made after receiving injuries, inadmissible for defendants, in manslaughter. *Comm'th. v. Densmore*, 568.

32. Evidence incompetent to contradict witness. *Id.*

## VIII. Rape.

33. Force is a necessary element of the crime of rape, and the degree of force used in ordinary sexual intercourse is not sufficient to constitute the crime. *Walter v. The People*, 746.

34. The woman's consent to the intercourse, even though obtained by fraud, prevents the act from being rape, unless the evidence shows that the man intended to use force if his fraud failed. *Id.*

35. Where a physician had carnal connection with a woman of infirm mind (but not imbecile) without resistance, but upon the pretence that he was treating her professionally for a disease of the womb, a conviction for rape was quashed. *Id.*

36. Prosecutrix may be asked whether she had illicit intercourse with a person named, at a specified time and place. *State v. Reed*, 773.

CURRENCY. See GOLD COIN.

CURTESY. See HUSBAND AND WIFE, II.

CUSTOM. See SHIPPING, 10, 11.

The true office of a custom or usage *Note to Strong v. Railway Co.*, 690.

DAM. See WATERCOURSE.

**DAMAGES.** See **BILLS AND NOTES**, 30, 31; **ESTOPPEL**, 4; **HIGHWAY**, 6; **INSURANCE**, 20; **LICENSE**, 6; **MASTER AND SERVANT**, 3; **OFFICER**, 5; **RAILROAD COMPANY**, 11; **SLANDER**, 1; **STEAMBOATS**, 4; **TRESPASS**, 5; **TRUSTS**, 4; **WARRANTY**, 2, 3; **WATERCOURSE**, 1.

1. When evidence in aggravation and mitigation admissible. *Millard v. Brown*, 378.

2. The measure of damages for conversion of shares of stock loaned, where the value has risen since the conversion, is the value at the time of trial. *Musgrave v. Benkendorf*, 433.

3. For failure to deliver specific articles contracted for. *White v. Tompkins*, 635.

4. When contract is to pay sum of money in specified articles. *Id.*

5. Amount of, upon warranty of a safe. *Note to Sanborn v. Herring*, 464.

6. Extent of, in trespass for removing property from attaching officer. *Houston v. Howard*, 438.

7. In seduction, are for jury. When court will not interfere. *Ingersoll v. Miller*, 443.

8. In action for not satisfying a judgment, evidence of special damage not necessary and court not bound to limit recovery to nominal damages. *Allen v. Conrad*, 23.

9. How far vendor of real estate, failing to make title, liable to purchaser in damages. *Note to Locke v. Furze*, 49.

10. For building blown up to stop a fire, how determined. *Parsons v. Pettigell*, 184.

11. Evidence to determine compensation for loss of mental and physical capacity by injury. *Ballen v. Farnum*, 58.

**DEATH.** See **EVIDENCE**, 31; **HUSBAND AND WIFE**, 2; **PARENT**; **PARTNERSHIP**, 1.

1. Evidence to rebut presumption of, from seven years' absence. *Flynn v. Coffee*, 318.

2. Presumption of, does not begin till the end of seven years. *Clarke v. Canfield*, 573.

**DEBT.** See **CONSTITUTIONAL LAW**, 1, 7; **GOLD COIN**.

**DEBTOR AND CREDITOR.** See **BANKRUPTCY**; **BILLS AND NOTES**, 7, 8.

**I. Sale or Conveyance Fraudulent as to Creditors.**

1. Sale of chattels, to remain property of the vendor, till paid for, not fraudulent in law. *Esty v. Aldrich*, 248.

2. How far an executory contract to defraud creditors, will be enforced between parties thereto. *Note to Blystone v. Blystone*, 205.

3. When creditors of an insolvent, transferring an interest for an inadequate consideration, will be aided in equity. *Bigelow v. Ayrault*, 59.

4. When such assignor will be relieved himself. *Id.*

5. Covinous note given to defraud maker's creditors, may be enforced against him. *Carpenter v. McClure*, 440.

6. Statute of Vermont, on validity of contracts fraudulent as to creditors. *Id.*

7. Who only can avoid contracts thereunder. *Id.*

8. In Maine creditor may levy on real estate, fraudulently conveyed by debtor. *Halls v. Sands*, 187.

9. May be attached in actions of tort and contract. *Id.*

10. Plaintiff in tort becomes a creditor on obtaining judgment. *Id.*

11. When fraudulent conveyance is void as to existing and subsequent creditors and both. *Id.*

12. When fraudulent mortgage avoided. *Id.*

13. Questions of fraudulent intent, for the jury. *Id.*

14. Judgment-creditor not necessary party to a creditor's suit to set aside assignment on ground of fraud. *Lawrence v. Bank*, 378.

15. Right of sheriff to action against proceeds of assigned property to make money on an execution. *Id.*

## DEBTOR AND CREDITOR.

II. *Tender.*

16. What is a valid tender of payment of money. *Berthold v. Reyburn*, 64.
17. Effect of tender. *Id.*
18. How to avoid the plea of tender by a subsequent demand. *Id.*
19. What is sufficient to constitute valid tender. *Strong v. Blake*, 191.
20. Must be an actual offer or presentation. *Id.*
21. Facts not amounting to a waiver of tender. *Id.*
22. Payment in U. S. treasury notes is a good tender, though contract be for current gold coin. *Appel v. Woltman*, 248.
23. Conditional offer, invalid as a tender. *Foster v. Drew*, 446.
24. When language used in making tender, merely explains what defendant claims as its extent. *Id.*

III. *Assignment for benefit of Creditors.*

25. It seems the declarations of an assignor for the benefit of his creditors, made prior to the assignment, are evidence against the assignee. *McBride v. Dorman*, 736.

26. A voluntary assignment of personality, valid in the place of contract, will not be upheld when opposed to the positive laws of the place where the property is situated. *Guillaudet v. Howell*, 522.

27. A firm residing and doing business in New York, made a voluntary assignment for the benefit of creditors, which included (*inter alia*) personal property in New Jersey. By the law of the latter state this assignment was void, because it gave preferences. After the assignment, the property was attached at the suit of creditors in New Jersey, against whom an action was afterwards brought by the assignee of the insolvent firm. *Held*, that the title acquired under the attachment must prevail over the assignment. *Id.*

28. What is not a counter claim by assignee for creditors, in an action against him for an account. *Duffy v. Duncan*, 315.

29. Assignee must prove the estate benefited by money paid out, to have credit therefor. *Id.*

30. Value of assignee's services and compensation therefor. *Id.*

IV. *Other matters.*

31. A warrant of arrest is not regularly issued, and cannot be enforced, under the Pennsylvania Act of 12th July 1842, pending a levy on the personal property of the defendant, by virtue of a *fi. fa.* in the sheriff's hands, issued on complainant's judgment, and pending the attachment of defendant's effects in the possession of the garnishee, by virtue of an execution-attachment issued on said judgment. *Comm'th. v. O'Hara*, 765.

32. Defendant no right to appropriate plaintiff's work as a payment upon a note held against him. *Carr v. McDonald*, 565.

33. Personal liability of assignees of a lessee for use and occupation. *Jermain v. Pattison*, 118.

34. When creditors, having taken a new security may set it aside and resort to original indebtedness. *The Winsted Bank*, 185.

## DECEDENTS' ESTATE. See HEIR; LIMITATION, 13.

## DECEIT.

Action of, for false affirmation of quantity of land and crop raised thereon. *Coon v. Atwell*, 378.

## DECLARATIONS. See CRIMINAL LAW, 31; EVIDENCE, I.

## DEED. See COVENANT, 1.

1. Destruction by parties after delivery will not re-invest grantor with title. *Fonda v. Sage*, 59.
2. No stranger can take advantage of breach of conditions in a conveyance. *Id.*
3. Estate is not forfeited, until re-entry. *Id.*
4. Effect of neglect and verbal refusal to perform condition. *Id.*
5. When delivery is presumed. *Id.*
6. Not every mere handing will constitute a full delivery. *Id.*

## DEED.

7. Facts not constituting delivery. *Fonda v. Sage*, 59.
8. If name of one of the makers, be omitted from body of the deed, his interest in premises is not conveyed thereby. *Peabody v. Hewett*, 185.
9. What will pass by a quit claim deed. *Hamilton v. Doolittle*, 119.
10. To be enforced according to intention. *Id.*
11. When it will pass all lands owned by grantor at time of its execution. *Id.*
12. Consideration in a conveyance, good, though merely nominal, and proof of actual payment need not be given. *Webster v. Van Steenbergh*, 185.
13. Wine plants growing in ground, will pass by an absolute conveyance, though reserved by parol. *Winternute v. Light*, 185.
14. What was meant by "Zinc" in a deed might be explained by evidence dehors. *Zinc Co. v. Franklinite Co.*, 568.
15. Construction of word "premises" in a deed may be assisted by resort to previous written agreement between the parties. *Id.*

**DELIVERY.** See COMMON CARRIER, 6; DEED, 5-7; EXPRESS COMPANY, 3, 4; SALE.

## DISCOVERY.

When feme covert trustee, wife of one of the principal defendants, bound to make. *Bank v. Clark*, 246.

**DIVORCE.** See HUSBAND AND WIFE, I.

## DOMICIL.

What evidence sufficient to acquire new. *Whitney v. Sherborn*, 316.

**DONATIO MORTIS CAUSA.** See GIFT.

**DOWER.** See HUSBAND AND WIFE, II; WITNESS, 9.

**EASEMENT.** See CANAL, 2; RIVERS.

1. Title to ditch may be established by adverse user. *White v. Chapin*, 569.
2. What use will be sufficient. *Id.*
3. When cannot be maintained by a trustee of a school district. *Id.*
3. When single final judgment, in ejectment, conclusive. *Sturdy v. Jackaway*, 439.
4. Extent of the doctrine. *Id.*
5. Landlord and tenant joined as defendants, must set up the misjoinder in their answer, or it will be too late. *Ames v. Harper*, 773.

**EMINENT DOMAIN.** See CONSTITUTIONAL LAW, 61-3.

1. Appropriation of property by, should not interfere further than public necessity requires with owner's enjoyment thereof. *Edgerton v. Huff*, 716.
2. If a simple servitude be sufficient, should be limited thereto. *Id.*

## ENTRY.

1. Where the owner of land has been dispossessed, a mere casual or stealthy entry by him does not disturb the adverse possession of the disseisor. His entry must be intended as an act of possession. *Burrows v. Gallup*, 84.
2. Where therefore the court charged the jury that a party who claimed a prescriptive right to a public landing must have excluded the public and every member of it, it was held that the charge was open to exception, as implying an actual exclusion of every member of the public from the premises, while it should have required only an exclusion from the possession. *Id.*

**EQUITY.** See CONSTITUTIONAL LAW, 27; CONTRACT, 5; CORPORATION, 15-20; DEBTOR AND CREDITOR, 3, 4; EXECUTORS AND ADMINISTRATORS, 1-5; FRAUDS, STATUTE OF, 1; LAND LAW, 1-3; MORTGAGE, 8-10; NUISANCE, 1; TRUSTS AND TRUSTEES, 11.

1. When specific performance will not be decreed of a land contract. *Chambers v. Livermore*, 635.

## EQUITY.

2. Specific performance will not lie on a covenant by a railroad company to keep cattle guards on plaintiff's land. *R. R. Co. v. Watson*, 718.
3. Specific performance not matter of right but of discretion. *Eastman v. Phemes*, 447.
4. When court will not decree specific performance. *Id.*
5. When party to a contract of sale, will forfeit his claim to aid of equity in enforcing it. *Id.*
6. Considerations not sufficient to induce court to set aside contract, may induce it to refuse specific performance. *Id.*
7. One seeking to avoid contract, cannot afterwards enforce it. *Id.*
8. Extent of injunction bond. *Towle v. Towle*, 316.
9. Injunction against carrying passengers to and from a certain depot. *Id.*
10. In action on injunction bond, defendants are concluded by the final decree in equity. *Id.*
11. Decree in, is *in personam*. May deal with contracts relating to land not within jurisdiction of court. *Wood v. Warner*, 571.
12. When complainants may seek account against the joint owners of a guano island. *Id.*
13. When a hearing can and cannot proceed, where some of the respondents do not reside within the jurisdiction. *Lawrence v. Rokes*, 248.
14. Court before hearing, may require satisfactory evidence, that parties not within jurisdiction, have actual knowledge of pendency of bill against them. *Id.*
15. Bill not sustained by proof of other like matters, not set forth therein. *Hubbard v. Winsor*, 320.
16. Decree dismissing bill, not on merits, no bar to a subsequent suit. *Hughes v. U. S.*, 443.
17. Jurisdiction of—when defendants were proceeding to acquire title to land under a destroyed instrument. *Fonda v. Sage*, 60.
18. What bill to restrain collection of taxes, as a cloud upon the title, must set forth. *Conway v. Showerman*, 320.
19. Loss of equity to set aside fraudulent decree, by laches. *Campan v. Van Dyke*, 635.
20. When court will compel accounting under prayer for general relief. *Wood v. Brown*, 121.
21. Bill in, proper proceeding for recovery of homestead. *Miles v. Miles*, 250.
22. The minor children are proper parties thereto. *Id.*

## ERROR. See CRIMINAL LAW, 12-14; MALICIOUS PROSECUTION, 12.

Judgment of court below is affirmed when errors assigned not sustained by a majority of Supreme Court. *Laughlin v. Harvey*, 637.

## ESTOPPEL. See CORPORATION, 29; TENANT IN COMMON, 2.

1. Requisite to create estoppel *in pais*. *Andrews v. Lyons*, 120.
2. When admission of signature to be genuine will estop defendant from denying same. *Bank v. Keene*, 249.
3. One will be barred by adoption of signature if made with knowledge of its forgery. *Id.*
4. Rule of damages upon note, in such cases. *Id.*

## ESTRAYS.

1. Constitutionality of ch. 459, laws 1862 (N. Y.). *Rockwell v. Nearing*, 378.
2. Proceedings thereunder are penal. *Id.*
3. Liability of captor, seizing animal on the public highway. *Id.*

## EVIDENCE. See ACKNOWLEDGMENT; BILLS AND NOTES, 15, 29; BOND, 3; BOUNDARY, 2; CRIMINAL LAW, 15, VII.; DEBTOR AND CREDITOR, 25; DEED, 15; SALE, 13; STAMPS, 4; WITNESS.

- I. *Admissions and Declarations*. See ESTOPPEL, 2, 3; EXECUTOR, 9; SURETY, 12.
  1. Admissions are competent against parties, when parol evidence of fact shown thereby, would be competent. *Keater v. Dimmick*, 121.

**EVIDENCE.**

2. Declarations of person in possession, as to title, admissible against subsequent claimants under him. *Keater v. Dinnick*, 121.
3. When inadmissible to defeat title. *Id.*
4. Declarations of grantee in respect to time of delivery of deed to him, when evidence. *Id.*
5. When admissions of a party are conclusive against him. *Calanan v. McClure*, 562.
6. Declarations of party in possession, evidence against himself or privies. *Gibney v. Marchay*, 120.
7. Such declarations incompetent to destroy title of record. *Id.*
8. Admissions by party in regard to title, when evidence for his heirs. *Spaulding v. Hallenbeck*, 316.
9. Declarations or admissions by assignors about property assigned, after they have lost control thereof, not part of *res gestæ*, are incompetent against assignees. *Peck v. Crouse*, 120.
10. When declarations of assignor's intentions, made in assignee's presence, not evidence. *Id.*
11. When assignor's acts, before assignment, evidence of intention in making it. *Id.*, 121.
12. When judge bound to submit validity of sale, or assignment of goods, to jury. *Id.*
13. When statements of patient to his physician are evidence for him in an action for a personal injury. *Barber v. Merriam*, 120.

**II. Book Entries.**

14. Entries upon books of third persons. *State v. Shinborn*, 379.
15. Requisites of such entries. *Id.*
16. For what, a physician's book may be received. *Clarke v. Smith's Exec.*, 120.
17. Effect of law admitting parties to testify upon admission of one party's book in evidence. *Id.*

**III. Experts.**

18. Opinion of expert in handwriting. *Woodman v. Dana*, 186.
19. Expert only competent to give opinion by comparison of hands by juxtaposition. *Id.*
20. When non-experts can give opinion. *Id.*
21. How such opinions are given, and the knowledge necessary on the two cases. *Id.*
22. Testimony of expert to prove signature. *State v. Shinborn*, 379.
23. Medical witness cannot give opinion, where he has no means of ascertaining facts, upon which it is asked. *Millard v. Brown*, 378.

**IV. Miscellaneous Matters.**

24. **TESTIMONY OF PARTIES IN CRIMINAL PROSECUTIONS**, 385.
25. In comparison of hands, to establish guilt in a criminal prosecution, what is sufficiency of proof of the genuineness of the standard writing. *State v. Ward*, 715.
26. Is a question for the court first. *Id.*
27. The testator gave to Amasa, his son, "the sum of \$90,000, which sum is to be made up of his notes, drafts, &c., which will be found sealed up and among my papers and directed to him, to be delivered to him by the executors in discharge of this bequest." There was found among the testator's papers a package sealed and directed in the hand of the testator thus: "For Amasa Mason—notes, drafts, &c., to make up the sum of \$90,000 devised to him in my will." The package on being opened, was found to contain notes, drafts, &c., against Amasa, for \$90,281. Among the papers of the deceased, but not in the package, was a note against Amasa for \$33,000 and interest, of a date anterior to the will, also a book account of \$6000, mostly prior to the date of the will. A memorandum in the handwriting of the deceased, and his declarations, also a paper signed by Amasa, were offered in evidence to show that the \$33,000 note and the \$6000 account were not intended to be included among the notes and drafts to be delivered to Amasa by the executors in discharge of

## EVIDENCE.

the \$90,000 bequest. *Held*, that this evidence was inadmissible. *Crosby v. Mason*, 13.

28. *Held*, also, that the fact of finding among the papers of the deceased the package answering the description in the will, the superscription on the package, and its contents, were all proper and admissible evidence for the purpose of identification. *Id.*

29. *Held*, also, that by the terms of the will in connection with this evidence, such notes and drafts only as were found in the package were to be delivered to Amasa by the executors in discharge of the bequest. *Id.*

30. Proof of due care on the plaintiff's part, in an action for negligence, will not raise a presumption thereof by defendants, or change the burden of proof. *Barren v. Ferry Co.*, 61.

31. When absence from place for seven years, raises presumption of death. *Hinchfield v. Emerson*, 186.

32. Proof admissible and relevant, not to be rejected, because might have been more satisfactory and conclusive. *People v. Fernandez*, 247.

33. *Res gestæ*. *Id.*

34. Adding a signature to a writing without fraudulent intent and its subsequent erasure, will not prevent its use in evidence. *Rhoades v. Castner*, 320.

35. Proof of the false affirmation in deceit. *Coon v. Atwell*, 378.

36. Of a witness, having knowledge only by sound. *State v. Shinborn*, 379.

37. In money had and received, note, with defendant's name on back, admissible under the general issue. *Sturtevant v. Randall*, 566.

38. When admissible, of condition of a highway, after injury received from its insufficiency. *Walker v. Westfield*, 569.

39. When a fact, is not collateral to the issue. *Id.*

40. When the act of a clerk is not the act of the notary, it may be proved as the act of an individual. *Gawtry v. Doane*, 714.

41. After his death, memoranda made by him are admissible to prove demand and notice. *Id.*

## EXCEPTIONS, BILL OF. See NEW TRIAL, 2.

1. Where a party, at the trial of a cause, takes an exception to the ruling or to the charge of the court, and puts the same in writing before the jury deliberate, the judge is bound to seal the exceptions, without regard to their nature or materiality. *Conrow v. Stroud*, 298.

2. If he decline to seal them, a writ under the statute of Westminster 2d will be awarded, commanding him to confess or deny the exceptions, and if his return confess them he will be compelled to seal them. *Id.*

3. How paper, not in body of bill of exceptions constituted part thereof. *Leftwitch v. Lecann*, 442.

4. Requisites therefor. *Id.*

## EXECUTION. See CRIMINAL LAW, 16; SALE, 10, 11.

1. Fi. fa. tested and issued after death of judgment-debtor is void. *Mitchell v. St. Maxent*, 440.

2. Same, where proceedings commenced by attachment against property. *Id.*

3. Exemption laws in Kentucky. *Anthony v. Wade*, 439.

4. When a man does not lose his character as a housekeeper thereunder. *Id.*

5. When property, in transitu, is exempt. *Id.*

## EXECUTORS AND ADMINISTRATORS. See ACTION, 8; CORPORATION, 13; COSTS, 1; GROWING CROPS; HEIR; INSURANCE, 12; LIMITATION, 13.

1. Executors and trustees, by bill in the nature of a bill of interpleader, may take the advice of a court of chancery upon questions connected with the discharge of their duties. *Crosby v. Mason*, 13.

2. The interposition of the court in such cases is discretionary, and will not be exercised except in matters of importance. *Id.*

3. Right of personal representative to demand aid of a court of equity in performing his duties. *Note to Crosby v. Mason*, 19.

## EXECUTORS AND ADMINISTRATORS.

4. One may call his co-executor to account in equity. *Wood v. Brown*, 121.
5. Creditors, legatees, and next of kin, necessary parties only to a final accounting. *Id.*
6. Interference of court, if one of several executors is guilty of misconduct. *Id.*
7. Power of surrogate in New York in such case. *Id.*
8. Execution of joint administration bond makes each liable for the other. *Jeffries v. Lawson*, 507.
9. What acknowledgment of liability for acts of co-administrator, is conclusive. *Id.*
10. Executor liable to account for assets left by heir in his hands to pay illegal legacies. *Wells v. Mitchell*, 508.
11. Administrator's failure to apply assets to pay debts, constitutes a breach of his bond. *Cannon v. Cooper*, 507.
12. Trespass q. c. f. survives to. *Railroad Co. v. Moye*, 507.

## EXPRESS COMPANY.

1. A person calling himself A. sent a telegram to a bank to send him a sum of money. The bank intrusted the package of money to an express company, which undertook to deliver it to "A. in person." The express company delivered the money to the person who had sent the telegram, but who proved not to be A., but a pretender, and the money was thereby lost. *Held*, that the company was liable whether it received the package as a common carrier or as a forwarder only. *American Express Co. v. Fletcher*, 21.
2. Delivery of package by, must be actual and bona fide, to discharge company. *Express Co. v. Haggard*, 121.
3. When there is no delivery and the company is liable. *Id.*

## FACTOR. See ACCOUNT STATED; AGENT; INTEREST, 4.

1. Liability of a factor under del credere commission, to his principal. *Cartwright v. Green*, 440.
2. When principal may recover price of goods sold on credit, from factor. *Id.*
3. Under del credere commission, it seems, is not a guarantor of the admittance. *Id.*

## FALSE PRETENCE. See ACTION, 4; CRIMINAL LAW, V.; FELLOW SERVANT; MASTER AND SERVANT, 1-3.

## FERRY COMPANY.

How far bound to furnish safe and convenient means of passage, and improved methods at greater expense. *Barren v. Ferry Co.*, 61.

## FINDER.

Of a pocket-book in a shop, not authorized to take and hold against shopkeepers. *McAvoy v. Medina*, 189.

## FIXTURES.

Rule of, between mortgagor and mortgagee. *Lynde v. Rowe*, 316.

## FORBEARANCE. See CONTRACT, 6; SURETY, 1, 2.

## FORCIBLE ENTRY AND DETAINER. See TRESPASS, 4-6.

## FORFEITURE. See DEED, 3; INSURANCE, 5-8; INTERNAL REVENUE, 3.

1. Where a statute in direct terms denounces a forfeiture of property as a penalty, the forfeiture takes place at the time the offence is committed, and operates as a statutory transfer of the right of property to the government. *U. S. v. 56 Bbl. of Whiskey*, 32.

2. In a proceeding *in rem* to ascertain the forfeiture, it is not material whether the statute declares that the *property* shall be forfeited, or that the *offender* shall forfeit it. In either case the date of the offence is the time to which the forfeiture relates. *Id.*

## FORMER ACTION. See ACTION, 10; BILLS AND NOTES, 16; COURTS, 3; EQUITY, 16; INDICTMENT; PLEADING, 9.

**FORWARDER.** See **EXPRESS COMPANY**, 1, 2.

**FRAUD.** See **AGENT**, 1; **BILLS AND NOTES**, 20; **CHECK**; **DEBTOR AND CREDITOR**, I.; **FRAUDS, STATUTE OF**; **JUDGMENT**, 6, 7; **LIMITATIONS**, 7; **SALE**; **VENDOR AND VENDEE**, 15-17.

**FRAUDS, STATUTE OF.** See **LICENSE**, 4; **TRUSTS**, I.

1. Court of equity will interfere against party intending to make Statute of Frauds an instrument of fraud. *Ryan v. Dix*, 122.
2. Parol promise to pay part of profits from sale of real estate not within. *Trowbridge v. Wetherbee*, 122.
3. Agreement which may be fully performed within a year, not within. *Esty v. Aldrich*, 248.
4. Agreement for sale of lands, signed by vendee only, void. *De Beerski v. Paige*, 563.

**GIFT.**

Rights of donee *mortis causa*, and subsequent legatee of same. *Note to Craige v. Kittredge*, 249.

**GOLD COIN.** See **CONSTITUTIONAL LAW**, I.

1. No greater value than currency, if applied to payment of debt without any special contract as to sale thereof. *Bush v. Baldrey*, 122.
2. Value of English sovereigns. *Id.*

**GROUND-RENT.** See **CONSTITUTIONAL LAW**, 7-10.

**GROWING CROPS.**

1. Effect of Revised Statutes making them assets in the hands of executor, upon law of their ultimate disposition. *Bradner v. Faulkner*, 122.
2. They go primarily to executor, if not necessary for payment of debts, to the beneficiary under the will. *Id.*
3. Devise of farm carries crops growing thereon. *Id.*

**GUARDIAN.**

Liability of surety for, making improvident investment. *Richardson v. Boynton*, 320.

**HABEAS CORPUS.** See **CONSTITUTIONAL LAW**, 52-55; **CRIMINAL LAW**, 14.

1. Authority of Circuit Courts to issue habeas corpus. *Ex parte Milligan*, 566.
2. Usual course of proceeding on application for the writ. *Id.*
3. When case may be brought in Supreme Court on error. *Id.*
4. Allowance or refusal of the writ, is matter of law. *Id.*
5. Right of person to discharge, arrested after the passage of the Act of March 3, 1863. *Id.*

**HEIR.**

1. At common law the heir was liable on the covenants of his ancestor in which he was specially bound, just so far, and no farther, as he had assets by descent; and as real estate alone descended to him, his liability was limited to that. *Hall v. Martin et al.*, 757.

2. But when, by statute, the personal estate is made to descend to him, the common-law principle requires it to be treated as assets in his hands, equally with the real estate; and such heir is liable on the covenants of his ancestor, which could not have been proved while the estate was in the course of administration, to the extent of the *personal*, as well as the *real* estate, which has so descended to him. *Id.*

3. Suits against an heir or devisee are not barred by the provisions of the Revised Statutes, ch. 161, §§ 5 and 6, limiting actions against executors or administrators of solvent estates, where no funds are retained for contingent claims by order of the judge of probate, to three years from the original grant of administration. *Id.*

4. But the limitation applies only to suits against the executor or administrator, and therefore the remedy against the heir or devisee upon claims which could not be proved during the three years, because contingent, is not impaired by these provisions, but remains as in the case of insolvent estates. *Id.*

**HIGHWAY.** See **CORPORATION**, 5; **EVIDENCE**, 38; **MORRIS CANAL**; **NEGLIGENCE**, 5-8.

1. Where a highway is laid out to navigable water and there terminates, the terminus may be regarded as presumably intended for a public landing as incident to the highway. *Burrows v. Gallup*, 84.

2. Where, however, a highway, running from place to place, is laid out along the shore of a navigable stream and in immediate contact with it for a considerable distance, the reason for the presumption does not exist. *Id.*

3. The question in such a case depends on the circumstances, and is one of fact for the jury. *Id.*

4. It seems that the statute (Rev. Stat. tit. 38, § 3), which provides that no person shall acquire title by adverse possession to land belonging to a highway, does not apply to a public landing not part of a highway. *Id.*

5. What use of road by public will make a highway by prescription. *Connary v. Jefferson*, 317.

6. Damages from insufficiency of, under New Hampshire Statute. *Id.*

7. Liability of principal for whom work has been done, constituting an obstruction or defect in highway. *Robbins v. Chicago*, 632.

8. Liability of city for accident by collision with a rope stretched across. *Barber v. City*, 123.

9. Liability of town upon indictment for defect in highway. *State v. Dover*, 317.

10. Effect of arrangement between a town and railroad corporation obstructing highway. *Id.*

11. Liability of towns for defects in. *Prindle v. Fletcher*, 569.

12. Not liable for injury through some latent defect in. *Id.*

13. What is not an obstruction of, under statute in New Hampshire. *Ray v. City*, 250.

14. Liability of town, where situate. *Id.*

15. When new highways not constructed to be discontinued. *Marlborough's Petition*, 317.

16. What report discontinuing, should state. *Id.*

17. When town's indebtedness proper cause for discontinuance. *Id.*

**HOMESTEAD.** See **CONDITION**, 2; **EQUITY**, 21; **HUSBAND AND WIFE**, 14.

Widow's right to, under New Hampshire Act, against a creditor whose debt accrued before act. *Judge of Probate v. Simonds*, 317.

**HUSBAND AND WIFE.** See **WITNESS**, 9, 10.

I. *Marriage, Divorce, and Alimony.* See **CRIMINAL LAW**, 18, 19.

1. Marriage where one party is under the age of consent. *People v. Slack*, 318.

2. Second marriage on presumption of death of former husband. *Kelly v. Drew*, 319.

3. In libel to annul marriage, parties are competent witnesses. *Foss v. Foss*, 380.

4. When court will not divorce for unchastity before marriage. *Id.*

5. Validity of divorce in Illinois by a citizen thereof when wife absent in another state under agreement of separation. *Hood v. Hood*, 60.

6. Joining religious society, disbelieving in marriage, cause for divorce in New Hampshire. *Fitts v. Fitts*, 248.

7. Decree in divorce cannot be made by consent, nor a decree confirming a divorce appealed from. *Robinson v. Robinson*, 636.

8. Alimony has no existence at common law as a separate and independent right, but only as an incident to a proceeding for some other purpose. *Bowman v. Worthington*, 621.

9. There is no inherent jurisdiction in a court of chancery to grant alimony. *Id.*

10. A divorced wife, having married again, is not entitled to alimony from her first husband. *Id.*

11. The Circuit Courts of Arkansas have jurisdiction of divorce and alimony, but the latter is incidental to the former and cannot be granted in a separate suit where it is the only relief sought. *Id.*

## HUSBAND AND WIFE

II. *Curtesy and Dower.*

12. Tenancy by courtesy no longer exists in Michigan. *Tong v. Marvin*, 318.
13. Mortgage by grantee immediately on conveyance will bar dower. *King v. Stetson*, 185.
14. Widow does not lose her right of homestead by second marriage. *Miles v. Miles*, 250.

III. *Separate Estate of Wife.* See *ASSUMPSIT*, 1.

15. Wife must prove her right as creditor of her husband with clearness. *Hause v. Gilger*, 635.
16. When question of "his means or hers," may be taken from the jury. *Id.*
17. Power of married woman to bind her separate estate by promise to pay for nursing her father. *Manchester v. Sables*, 509.
18. Not liable in such case, under statute to maintain her father. *Id.*
19. Statutes 1848 and 1849 (N. Y.) did not remove legal incapacity of married woman to contract debts. *Id.*
20. Cannot charge her estate with a debt not connected with it and not for her own benefit. *Id.*
21. Husband's marital rights in New Hampshire not divested by Act of 1860 until August of that year. *Atherton v. McQuester*, 250.
22. Rights of husband and wife and their representatives in such cases. *Id.*
23. Authority of agent to submit to arbitration, damage to land of his principal's wife. *Smith v. Sweeney*, 379.
24. How far wife can enforce and is bound by the award. *Id.*
25. Debts contracted by the wife on the faith of her separate estate are not, in a legal sense, an encumbrance upon such separate estate, and are, therefore, not embraced in the restriction of the statute of Indiana, which provides, that the wife shall have no power to encumber or convey lands constituting her separate estate, "except by deed in which her husband shall join." *Kantrowitz v. Prather*, 602.
26. Administrator of a feme covert may sue the husband of his intestate at law. *Albee v. Cole*, 716.
27. What is conversion of wife's property by husband. *Id.*

IV. *Powers of Married Woman to Contract.*

28. A married woman has no legal right to confess a judgment, but such judgment if confessed is not void, but only voidable. *Roraback v. Stebbins*, 696.
29. If, therefore, she allows a judgment confessed by her to a *bond fide* creditor to stand, and her property to be sold under an execution, the purchaser acquires a good title against all persons, except other creditors having a lien on the property. *Id.*
30. Married woman can only contract for sale of her land or convey it, in precise statutory mode. *Glidden v. Strupler*, 635.
31. Contracts of feme covert are nullities. *Id.*
32. Her power to convey in Pennsylvania, in law and equity. *Id.*
33. How only contract of married woman can be ratified. *Id.*
34. When she will not be estopped. *Id.*
35. When married woman, doing business as boarding-house keeper may bind herself for furniture. *Tillman v. Shackleton*, 636.

V. *Actions by and against Husband and Wife.* See *ASSUMPSIT*, 1.

35. When vendor selling to wife on her separate credit cannot recover of husband. *Hill v. Goodrich*, 250.
36. Liability of husband, deserting his wife and children, for necessities. *Note to Carter v. Howard*, 411.
37. Statute making husband and wife witnesses for each other only confers a privilege, which party may or may not assert. *Knowles v. People*, 636.
38. Inferences against husband for failure to call wife. *Id.*

ICE. See *CANAL*, 2; *NEGLIGENCE*, 8.

## IMPEACHMENT.

1. TRIAL BY, 257.
2. THE LAW OF, 641.

## INDICTMENT. See HIGHWAY, 9.

Nolle prosequi entered before trial on an information, no bar to. *State v. Dever*, 317.

## INJUNCTION. See CONSTITUTIONAL LAW, 27; EQUITY, 8-10; NUISANCE, 1, 2, 4.

## INNKEEPER.

1. Requirement of license, to make an innholder. *Norcross v. Norcross*, 565.
2. Liability of innkeepers. *Id.*
3. What is sufficient allegation that defendant was an innkeeper. *Id.*
4. Onus on innkeeper to bring loss within excepted cases. *Id.*
5. When relation of landlord and guest attaches, and how long it continues. *Id.*
6. When his liability for goods, attaches. *Id.*

## INSANITY. See WILL, II.; WITNESS, 2.

## INSOLVENCY. See BANKRUPTCY.

When discharge under insolvent laws of one state may be pleaded in bar of an action by citizen of another state. *Gilman v. Lockwood*, 632.

## INSURANCE.

1. A fire insurance upon the buildings of a manufactory covers all risks arising from the use of articles ordinarily used in such manufactories, unless such risks be expressly excepted. *Ins. Co. v. McLaughlin*, 374.

2. In an insurance on the buildings of a patent leather manufactory, benzole being an article of common use in such establishments, the policy reciting—"Privilege granted of keeping not more than five barrels of benzole in a small shed entirely detached from all the other buildings, situated on the rear end of the lot, about 100 feet from the main building, and nowhere else on said premises," the prohibition excludes the benzole as *stored in bulk*, from the factory, but not its use in the conduct of the business in the ordinary way. *Id.*

3. A witness whose knowledge of the custom as to the use of certain articles, is acquired in similar manufactories in other localities, is competent to testify as to the usage of the business. *Id.*

4. Is upon building as such—not on mere materials. *Have v. Ins. Co.*, 60.

5. Forfeiture of, to be construed strictly. *North Berwick Co. v. Ins. Co.*, 187.

6. What will be regarded as a waiver of forfeiture. *Id.*

7. Answer to question on application for. *Id.*

8. Powers of agents to vary risk and waive forfeiture. *Id.*

9. What is not an increase of risk. *Id.*

10. Agent may waive condition in policy for cash payment of premium and give credit. *Boehm v. Ins. Co.*, 318.

11. When credit will be inferred and policy valid. *Id.*

12. By an executor in his own name, on the property of his testator, enures to benefit of the estate. *Colburn v. Lanning*, 123.

13. Defendants must set up a condition in policy as a defence in their specifications to avail themselves thereof. *Dyer v. Ins. Co.*, 250.

14. The peril insured against must be sole proximate cause of the loss. *Id.*

15. And loss must be dependent on the peril and its necessary and inevitable effect. *Id.*

16. Sale of portion of cargo to pay for repairs not necessary result of peril at sea. *Id.*

17. What necessary to render property subject of general average. *Id.*

18. What sale of part of cargo excluded from general average. *Id.*

19. Insurers liable for amount paid for injury by collision. *Blanchard v. Ins. Co.*, 508.

## INSURANCE.

20. Damages in such case, when counsel fees, agents' commissions, and premium for exchange may be included. *Blanchard v. Ins. Co.*, 508.
21. Validity of policy, upon conveyance of vessel by insured and reconveyance to him. *Worthington v. Bearse*, 508.
22. What will amount to waiver of objection to preliminary proof of loss. *Graves v. Wash. Ins. Co.*, 508.
23. If not objected to on trial, too late at the argument upon exceptions. *Id.*
24. What insured may recover upon condemnation and sale of vessel in a port of necessity. *Id.*

## INTEREST. See LIMITATION, 4; SURETY, 14.

1. Commercial intercourse between parties in the Northern and Southern states during the late rebellion having been prohibited, both by the general rules of public law, and expressly by the Act of Congress of 13th July 1861 and the President's proclamation in pursuance thereof, interest was suspended on debts due by persons in the territory of either belligerent to persons in the territory of the other. *Tucker v. Watson*, 220.

2. Nor did such a debt begin to bear interest by reason of the presence of the creditor at the residence of the debtor and his demand for payment, unless he had abandoned his residence in the hostile territory and taken such measures as the rules and policy of the debtor's government prescribed to change his status as an enemy. *Id.*

3. Interest is not chargeable upon book-debts except by virtue of special custom or agreement. *Crosby v. Mason*, 13.

4. In an action against factor for proceeds of sale, interest will be allowed by law of place of sale. *Cartwright v. Green*, 441.

5. Law of the place where the contract is to be performed will govern rate. *Bank v. Young*, 60.

6. Usury laws of one state will not be enforced in another, on contracts made in latter. *Id.*

7. Parties may lawfully stipulate, if done in good faith and not as cover for usury, for rate of interest in either state, where contract is made in one and payable in another. *Townsend v. Riley*, 251.

8. Surplus of interest, after partial payments thereof, cannot be taken to augment principal. *Id.*

9. Application of payments, when interest is stipulated for, annually. *Id.*

10. In other cases. *Id.*

11. Party using a note as evidence of claim, may have lawful interest on sum due him, though note promised to pay unlawful interest. *Newell v. Nixon*, 636.

12. The receiver of a borrower paying usury, may sue for excess of interest. *Palen v. Johnson*, 127.

13. Action for usurious interest must be brought within the time prescribed in statute. *Id.*

14. When note payable in city of New York and discounted in the country, the proceeds whereof are paid in a city draft at usual rates, is usurious. *Union Bank v. Gregory*, 57.

## INTERNAL REVENUE.

1. In a proceeding for condemnation of whiskey for violation of sect. 68 of the Internal Revenue Act of 30th June 1864, the fact that the whiskey had passed into the hands of a *bond fide* purchaser before the commencement of the suit will not avail the claimant. *U. S. v. 56 Bbls. of Whiskey*, 32.

2. Nor is it material that before such purchase the whiskey had been regularly branded by a United States inspector. *Id.*

3. Where such purchaser has, for the purpose of rectification, mixed the whiskey forfeited with other whiskey, so that it is not capable of identification, the whole is liable to forfeiture. *Id.*

## JEOPARDY. See CRIMINAL LAW, 5-9.

## JEWS. See SUNDAY, 2.

**JUDGMENT.** See **ACTION**, 4; **HUSBAND AND WIFE**, 28, 29; **SURETY**, 10.

1. Court must have complete jurisdiction to render. *Railroad Co. v. Weeks*, 188.
2. Absolutely void, if it appear by inspection of record, to have been rendered without notice to defendant. *Id.*
3. In one state, founded upon attachment of property, without defendant's appearance who is a non-resident thereof, cannot be enforced in another state. *Price v. Hickok*, 714.
4. *Quare*, as to validity of judgment against a resident, temporarily absent, without service. *Id.*
5. Effect of a general judgment on an issue in bar. *Sheldon v. Edwards*, 381.
6. Judgment fraudulently confessed to defraud debtor's creditors, is good between parties and execution will be enforced. *Blystone v. Blystone*, 203.
7. Judgment is an execution and merger of the fraudulent contract. *Id.*
8. Whether a judgment is an executed contract. *Note to Same*, 205.
9. In an action, under statute, against a judgment-creditor for not entering satisfaction of the judgment, the record showed an execution on the judgment, a rule absolute on the creditor and the sheriff to show cause why the debtor should not pay a certain sum in full satisfaction of the judgment, interest, and costs, and a return of the execution by the sheriff as "stayed by the order of court." There was no record-evidence of the actual payment of the money, though it was in fact paid. *Held*, that these facts did not constitute such satisfaction on the record, of the judgment, as the statute demands. *Allen v. Conrad*, 23.
10. Title to, recovered by deputy against bank for money collected on execution and deposited therein. *Downer v. Bank*, 448.
11. Effect of sale of such judgment, by deputy. *Id.*
12. In an action against all the obligors in a joint and several bond, can only have judgment against all defendants, jointly. *Judge of Probate v. Webster*, 318.
13. Power of Supreme Judicial Court in New Hampshire to vacate, at a subsequent term. *Id.*
14. The county clerk is liable for damages resulting from errors and mistakes in his searches. *Kimball v. Connolly*, 598.
15. But the damages must be the direct consequence of such error or mistake. *Id.*
16. Where the purchaser of the search takes no action, parts with nothing of value, and is put in no worse condition by relying upon the search than he was before, he has no claim for damages. *Id.*

**JURISDICTION.** See **COURTS**; **EQUITY**, 11-14; **JUDGMENT**, 1-4.

1. **LIMITS BETWEEN STATE AND NATIONAL**, 193.
2. Fact that property is out of jurisdiction of court, no objection to court making decree, where parties are citizens and appear regularly. *Wood v. Warner*, 570.

**JURY.** See **CONSTITUTIONAL LAW**, VIII.; **CRIMINAL LAW**, 6-11; **MUNICIPAL CORPORATION**, 1; **NEW TRIAL**, 1.

1. **THE UNANIMITY OF JURIES**, 727.
2. Matter of discretion with judge to discharge jury or not. *White v. Calder*, 319.

**JUSTICE OF THE PEACE.**

Refusal to proceed, may be treated as nonsuit. *Partridge v. Lott*, 319.

**LAND LAW.** See **TAXATION**, 1-3.

1. When equity of pre-emption claimant not defeated by subsequent entry of one obtaining patent. *Hughes v. United States*, 443.
2. When court of equity will set aside a patent of the United States. *Id.*
3. What possession of real property sufficient to put on inquiry. *Id.*
4. Consequences of neglect to make inquiry. *Id.*
5. Land ceases to be public upon entry at land office and certificate thereof. *Witherspoon v. Duncan*, 445.

**LANDLORD AND TENANT.**

1. The plaintiff, being in possession under an old lease, had an *interesse termini* under a reversionary lease of the same premises from the same lessor. Before the expiration of the original lease, V., claiming under the lessor by a good title, repudiated the reversionary lease, and subsequently granted to the plaintiff a lease for a shorter term at an increased rent. Held (affirming the judgment of the Court of Common Pleas), that the ordinary rule of law, that on a breach of contract the person injured is entitled to be put in the same position as that in which he would have been had the contract been fulfilled, applied; and that therefore the plaintiff was entitled to recover the difference between the value of the reversionary lease and that granted by V., although he had never entered under the reversionary lease. *Locke v. Furze*, 45.
2. What will raise implied assent by tenant to landlord's notice of increase of rent. *Hunt v. Bailey*, 252.
3. Lease becomes void upon premises being taken for city or public improvements. *Barclay v. Pickles*, 252.
4. Wine plants upon a farm are personal property and tenant may remove them. *Winternute v. Light*, 188.
5. Validity of mortgage thereof. *Id.*
6. Set-off in action for rent, for necessary repairs and damages. *Myers v. Burns*, 380.
7. How far defendant may recover therefor. *Id.*
8. Covenant to keep in repair, broken by bad condition of flues. *Id.*
9. After refusal to ratify lease by lessor's heirs, lessees may recover rent paid in advance for unexpired portion of term. *Campan v. Shaw*, 319.
10. Proof necessary to maintain action for use and occupation. *Hall v. Transportation Co.*, 123.
11. Need not actually occupy. *Id.*

**LARCENY.** See **CRIMINAL LAW, VI.****LEASE.** See **ACKNOWLEDGMENT; LANDLORD AND TENANT, I, 3, 9.****LEGACY.** See **CONTRIBUTION; GIFT.****LEGAL TENDER NOTES.** See **CONSTITUTIONAL LAW, I.****LEGISLATURE.** See **CONSTITUTIONAL LAW, IV., X.; CORPORATION, 20-24.**  
**LETTERS.**

No objection that only a few and not all of correspondence between parties, are offered in evidence. *North Berwick Co. v. Ins. Co.*, 188.

**LICENSE.**

1. An agreement was made by the owner of land with one who was to explore the same for mineral oil, and if oil was found a part of the land was to be sold to the explorer. Held, to be a personal license, on which ejectment would not lie by the assignee of the covenantee. *Dark v. Johnston*, 543.
2. If the licensee had held possession under the license he might have recovered in ejectment so much of the land as he had lawfully occupied under the license. *Id.*
3. To do certain acts on another's land, does not convey any interest therein. *Houston v. Saffee*, 380.
4. Statute of Frauds does not apply thereto. *Id.*
5. How far such license is revocable. *Id.*
6. Damages for cutting lead pipe laid upon defendant's land under a parol license. *Id.*

**LIEN.**

1. Corporation issuing stock has no lien, at common law, against same for debts in its favor. *Dock Co. v. Heron*, 634.
2. When such lien exists, it is by legislative authority. *Id.*
3. On a vessel built for and delivered to the United States, when cannot be enforced. *Briggs v. Light Boat*, 61.

**LIFE ESTATE.**

Amount received on sale of right to subscribe to new shares of stock, is

## LIFE ESTATE.

capital, and interest thereof only to be paid tenant for life. *Atkins v. Albree*, 507.

## LIMITATIONS. See AMENDMENT, 4, 5; HEIR, 3, 4; PLEADING, 11, 12.

1. Statutes of limitation are suspended during a state of war, as to matters in controversy between citizens of the opposing belligerents, although the statute may have begun to run before the war. *Jackson Ins. Co. v. Stewart*, 732.

2. The late conflict between the United States and the states attempting to secede was a civil war, involving the usual consequences and rights of international wars, and among them the suspension of the right to sue as between citizens of the opposing belligerents, and therefore the suspension of the statutes of limitation. *Id.*

3. As regards the state of Tennessee the war must be taken to have commenced after the President's Proclamation of August 16th 1861. *Id.*

4. On a recovery by a citizen of Tennessee against a citizen of Maryland after the close of the war for a debt due before its commencement, no interest will be allowed for the period covered by the war. *Id.*

5. What payment will take a case out of. *Miller v. Talcot*, 188.

6. Accumulating disabilities, of infancy and coverture, cannot be connected to extend time of commencing action under Rev. Stats. *Nutter v. De Rochement*, 252.

7. If fraud be concealed by defendant's act, so that plaintiff could not have discovered same, statute will not run till its discovery. *Edwards v. Gibbs*, 509.

8. When should not be allowed to prevail. *Calanan v. McClure*, 571.

9. Short statutes of, highly penal, and to be construed strictly. *Id.*

10. A plaintiff, assignee, may reply the statute to a set-off against his assignor. *Thompson v. Sickles*, 124.

11. Seems, benefit of statute should be extended to assignee of any transferable demand. *Id.*

12. Right of an assignee of a note to set up statute against a demand of the maker, as set-off. *Id.*

13. Claim against estate not barred, till six months after its final rejection by executor. *Calanan v. McClure*, 563.

## LIS PENDENS.

1. Notice of, by code in 1859, might be filed before service of the summons upon defendant. *Stern v. O'Connell*, 252.

2. When subsequent mortgage barred thereby. *Id.*

## LOST GOODS. See FINDER.

## MALICIOUS PROSECUTION. See PLEADING, 8.

1. Ground of the action. *Drew v. Potter*, 571.

2. What is an insufficient averment of the prosecution or judicial proceeding. *Id.*

3. Burden of showing probable cause. *Smith v. Ege*, 637.

4. What probable cause is, and on what it depends. *Id.*

5. Rumors, and representations of others, as a foundation for belief of guilt. *Id.*

6. What was reasonable ground for belief of guilt of murder. *Id.*

7. What plaintiff must prove to maintain. *Miller v. Milligan*, 717.

8. Malice and want of probable cause must both be proved. *Id.*

9. When plaintiff should be nonsuited. *Id.*

10. Probable cause depends upon the prosecutor's belief of guilt or innocence. *Id.*

11. When he will be deemed to have had probable cause. *Id.*

12. In malicious prosecution, on error, whole evidence must be given. *Smith v. Ege*, 637.

## MALPRACTICE. See NEGLIGENCE, 9, 10.

**MANDAMUS.**

1. What return thereto must set forth. *Society v. Comm'th.*, 634.
2. Sufficiency of return, that relator had been "tried and convicted of the charges." *Id.*
3. When it will not be issued directing restoration of an attorney, removed from rolls, without previous charge or process. *Randall, Petitioner*, 189.

**MANSLAUGHTER.** See **CRIMINAL LAW**, VII.**MARRIAGE.** See **HUSBAND AND WIFE**, I.**MASTER AND SERVANT.**

1. The rule that a master is not liable to a servant for injury received through the negligence of a fellow-servant, applies to the parents of a minor killed by negligence of a fellow-servant. *Caldwell and Wife v. Brown et al.*, 752.
2. Persons in the same general employment, carrying out a common object under one master, are fellow-servants, although they may be employed in different branches of the occupation. *Id.*
3. The measure of damages for the loss of a minor child by negligence, is the pecuniary value of the child's services while under age. *Id.*
4. Master ordinarily responsible for negligence or want of skill, with which his employees do his business. *R. R. Co. v. Baum*, 717.
5. But no action will lie against master for wilful and malicious trespass of a servant. *Id.*
6. Unless the act was necessary to accomplish the purpose of his employment. *Id.*
7. Same rules apply to corporations. *Id.*
8. Liability of master for the servant's acts. *Have v. Newmarch*, 381.

**MERGER.**

1. When it takes place. *Bascom v. Smith*, 124.
2. Will not take place in equity, against requirements of justice or intentions of parties. *Sheldon v. Edwards*, 381.

**MILITARY COMMISSIONS.** See **CONSTITUTIONAL LAW**, VIII.**MILITARY SERVICE.** See **WILL**, IV.**MISREPRESENTATIONS.** See **Vendor and Purchaser**, 17, 18.**MISTAKE.** See **MORTGAGE**, 1-2.**MORRIS CANAL.**

1. Is a public highway, though subject to tolls and regulations of the company. *Barnet v. Johnson*, 569.
2. Rights of owners of land adjacent the Morris Canal. *Id.*
3. Company or its grantee, will be restrained from interfering therewith. *Id.*

**MORTGAGE.** See **ACKNOWLEDGMENT**; **FIXTURES**; **HUSBAND AND WIFE**, 13; **LANDLORD AND TENANT**, 5; **LIS PENDENS**, 2.

1. Title of person buying premises sold under a mortgage, in which are incorrectly described, under belief that it covered whole tract. *Waldron v. Letson*, 571.
2. Mortgage could have been reformed before foreclosure; but not to prejudice of the purchaser thereunder. *Id.*
3. Sale under an illegal proceeding cannot affect valid mortgage. *Stackpole v. Robbins*, 572.
4. Effect of setting aside a foreclosure and sale is to restore mortgage to its original position. *Id.*
5. And new proceedings may be commenced. *Id.*
6. Effect of fraudulent sale, after voluntary promise by mortgagee not to sell under a power, without notice to mortgagor. *Randall v. Hazelton*, 510.
7. Fraudulent addition by grantee of name of grantor's wife, will not render invalid. *Kendall v. Kendall*, 382.

## MORTGAGE.

8. Bill in equity to redeem, in New Hampshire. *Hall v. Hall*, 382.
9. By whom and when maintainable. *Id.*
10. Enjoining suit at law, thereupon. *Id.*
11. Mortgagor's right to call upon mortgagee in possession to account, must be enforced in equity. *Seaver v. Durant*, 718.
12. Right to hold mortgagee responsible for waste after condition broken, is only an equity. *Id.*
13. The entire legal interest is in the mortgagee in possession after condition broken. *Id.*
14. Notes secured by, to be paid from proceeds of sale, in order of their maturity. *Thompson v. Field*, 253.
15. Mortgagee's title under chattel mortgage. *Hall v. Simpson*, 381.
16. Right of possession ordinarily passes thereby. *Id.*
17. Unless instrument provides, or law implies therefrom, that possession is to remain with mortgagor. *Id.*
18. Mortgagor's interest liable to levy and sale. *Id.*
19. When mortgagor's right of possession terminates. *Id.*
20. Of personal chattels, attached to the freehold. *Sheldon v. Edwards*, 381.

## MUNICIPAL CORPORATION. See ACTION, 4; CONSTITUTIONAL LAW, 61; HIGHWAY, 8-14; NEGLIGENCE, 5-8; WAY, 1.

1. Has no constitutional guarantee to trial by jury. *Borough of Dunmore's Appeal*, 637.
2. A municipal corporation has no power to lend its credit or make its accommodation paper for the benefit of citizens, to enable them to execute private enterprises. *Clark v. City of Des Moines*, 146.
3. The building of sidewalks is, ordinarily, a legitimate municipal object. *Id.*
4. When a municipal corporation, acting under the Constitution of 1846, issued in payment of a *bona fide* indebtedness, scrip to circulate as money, after which the scrip was taken up by the issuance of ordinary warrants on the treasury thereof for the amount of the same, it was held that the transaction could not be impeached by the corporation on the ground that the scrip was illegal and void. *Id.*
5. Agents, officers, or even a city council of a municipal corporation, cannot bind the corporation by any act which transcends their lawful or legitimate powers. And this rule applies to the issue of negotiable as well as non-negotiable evidences of debt. *Id.*
6. The duties and powers of the officers of a municipal corporation are prescribed by the statute, and every person dealing with them as such may know, and is charged with knowledge of the nature of these duties and the extent of these powers. *Id.*
7. A corporation may set up a plea of *ultra vires*, or its own want of power under its charter or constituent statute to enter into a given contract, or to do a given act, in excess of its corporate power and authority. *Id.*
8. Municipal corporations have and can exercise only such powers as are expressly granted, and such incidental ones as are necessary to make these powers available, and are essential to effectuate the purposes of the corporation; and these powers are strictly construed. *Id.*
9. When the officers of a city have no express power, to issue for current, ordinary debts, negotiable paper which shall be free from equities in the hands of purchasers, and it is not necessary as an incident to those granted, or to carry out the purposes and objects of the corporation, it cannot be held to exist by implication. *Id.*
10. The assignee of warrants drawn by the officers of a municipal corporation on the treasury thereof, is bound, at his peril, to ascertain the nature and extent of the powers of such officers and of such corporation. *Id.*
11. The want of corporate power or the want of authority in the municipal officers, cannot be supplied by their unauthorized action or representations. *Id.*
12. Warrants issued by a municipal corporation in payment of a judgment

## MUNICIPAL CORPORATION.

at the rate of one dollar in warrants for every seventy-five cents due on the judgment, are tainted with usury. *Clark v. City of Des Moines*, 146.

13. It may be doubted whether a municipal corporation is bound by the action of its council in agreeing to pay a sum clearly, distinctly, and ascertainably greater than is legally due: *arguendo*, per DILLON, J. *Id.*

14. No municipal corporation can erect a toll-bridge and levy and collect tolls, unless authorized by the law of the state. *Id.*

15. Extent of authority of. *Note to Clark v. City of Des Moines*, 161.

16. Neither relation of master and servant nor principal and agent exists between a town and its health or police officers. *Mitchell v. Rockland*, 189.

17. Town not liable for their unlawful or negligent acts. *Id.*

18. As a general rule, only liable to suit, when given by statute. *Id.*

19. Seems, cannot ratify the negligent, careless, or tortious acts of its officers. *Id.*

20. Evidence of knowledge of negligent acts and approval. *Id.*

21. Power in a charter, to borrow money for any public purpose, is valid. *Mitchell v. Burlington*, 638.

22. Construction of a plank road is a public purpose. *Id.*

23. Municipal bonds, valid when issued, cannot be invalidated by subsequent judicial exposition. *Id.*

24. Right to lay out a town way upon lands of citizens, wholly for access by public, to points of pleasing natural scenery. *Higginson v. Nahant*, 187.

25. Cannot enforce its by-laws by penalties, unless authorized by statute. *City v. Hughes*, 319.

26. Power to impose penalties for obstructions to and encroachments upon streets. *Id.*

27. Irregularity or want of authority in establishing a street, no defence in action for negligence against, for want of care thereof. *Mayor v. Sheffield*, 441.

28. When liable for injury from defective walk. *Dewey v. Detroit*, 638.

## MURDER. See CRIMINAL LAW, VII.

## NATIONAL BANKS. See CONSTITUTIONAL LAW, II.

## NAVIGABLE STREAM. See CONSTITUTIONAL LAW, VI.; HIGHWAY, 1-4; RIVER.

## NEGLIGENCE. See ACTION, 3, 8; BANK, 4; COMMON CARRIER, 12, 13, 16; CORPORATION, 4, 5; EVIDENCE, 30; MASTER AND SERVANT, 1-4; MUNICIPAL CORPORATION, 16-20; RAILROAD, 5, 13-18, 23-30; TROVER, 2; VENDOR AND VENDEE, 17-20.

1. When employee of sub-contractors may recover for injury through negligence of superior contractors. *Curley v. Harris*, 61.

2. Must be actual negligence to make carriers of passengers liable. *Sawyer v. R. R. Co.*, 62.

3. Action for, by servant of landlord working an elevator—whether incident to business that men should go up and down thereupon. *Stewart v. College*, 382.

4. What is material and admissible in such case. *Id.*

5. The test, in cases of injury from defects in highways. *Walker v. Westfield*, 570.

6. Plaintiff must show defect in road and that no want of care contributed to accident. *Id.*

7. Want of care on part of the plaintiff to be submitted to jury. *Id.*

8. When fact of road being slippery from ice upon it, is not a defect or want of repair for which town will be liable. *Stanton v. Springfield*, 570.

9. There is an implied obligation on a person professing to practise as a surgeon that he should possess the ordinary skill of the profession. *Wilmot v. Howard*, 774.

10. Where by improper treatment of a surgeon the patient must have a defective arm, the surgeon is liable although the negligence of those in charge of the patient aggravated the case. Such negligence affects only the amount of damages. *Id.*

**NEGOTIABILITY.** See **MUNICIPAL CORPORATION**, 2-12.

Negotiability will not validate obligations which are not binding because of want of power to make them. *Clark v. City of Des Moines*, 146.

**NEGROES.** See **CITIZENSHIP**.**NEMO BIS VEXARI DEBET.**

Where the maxim does not apply. *Amsinck v. Harris*, 100.

**NEW TRIAL.**

1. What must show to obtain, by reason of interest in a juror. *Jameson v. R. R. Co.*, 190.
2. Motion for a new trial no waiver of exceptions. *United States v. Dashiell*, 442.

**NON-RESIDENTS.** See **ACTION**, 1 ; **CONSTITUTIONAL LAW**, 34 ; **JUDGMENT**, 3.**NONSUIT.** See **JUSTICE OF THE PEACE**.

1. Nonsuit of one of several co-plaintiffs, in a personal action, is nonsuit of all. *Brown v. Wentworth*, 383.
2. When nonsuit will be entered at request of one plaintiff. *Id.*
3. What sufficient to prevent entry thereof. *Id.*

**NOTARY.** See **BANKS**, 4 ; **BILLS AND NOTES**, 29 ; **EVIDENCE**, 40.**NOTICE.** See **AGENT**, 12 ; **BILLS AND NOTES**, 11, 17, 22, 25, 28 ; **COURTS**, 4 ; **JUDGMENT**, 2-4 ; **LAND LAW**, 3, 4 ; **LANDLORD AND TENANT**, 2 ; **LIS PENDENS**, 1 ; **POWERS**, 2 ; **REAL ESTATE**, 5 ; **TRUSTS**, 9 ; **VENDOR AND VENDEE**, 5-7 ; **WAY**, 1, 2.**NUISANCE.** See **PRESCRIPTION**.

1. Equity will restrain, if direct, continuing, and permanent. *Hayden v. Tucker*, 62.
2. When necessary for party to establish his right at law. *Id.*
3. Keeping of jacks and stallions in view of private house is a nuisance. *Id.*
4. No period of use and under whatever claim of right will protect nuisance from abatement or injunction. *City v. Erickson*, 123.
5. Plaintiff must establish the fact that nuisance will be created by proposed erection, with clearness and certainty. *Id.*
6. Danger must be imminent and impending, and the mischief irreparable. *Id.*
7. When a wall occupying any portion of river bed, is a nuisance. *Id.*
8. Where a party can maintain an action for a nuisance, he may abate, though causing but nominal damage. *Amoskeag Co. v. Goodale*, 256.

**OFFICE AND OFFICER.** See **ACTION**, 9 ; **CONSTITUTIONAL LAW**, 26, 38 ; **MUNICIPAL CORPORATION**, 16, 19 ; **PLEADING**, 17 ; **QUO WARRANTO**, 2, 4 ; **SURETY**, 9.

1. Nature of assessor's office. His liability. *Barhyte v. Shepherd*, 313
2. What is a suit against U. S. officer under Act of Congress of 1833, c. 57, § 3. *Comm'th. v. Casey*, 441.
3. When action of damages for tort will lie against public officer, acting by independent authority. *Clark v. Miller*, 443.
4. May be brought for refusal to perform duty imposed by law. *Id.*
5. Damages in action against supervisor of highways. *Id.*

**PARDON.** See **ATTORNEY**, 2 ; **CONSTITUTIONAL LAW**, 33.**PARENT.**

Father claiming title must show death of son without issue. *Stinchfield v. Emerson*, 186.

**PARTITION.**

1. Between tenants in common by written agreement to refer to arbitrators. *Wilder v. Russell*, 383.
2. In petition for, in N. H., statute will be satisfied by setting off petitioner's share only. *Abbott vs. Berry*, 383.

**PARTITION.**

3. A decree in partition in Orphans' Court (Pa.) divides the subject among the heirs; it is no transfer of title to them. *Desher v. Water Co.*, 638.
4. Partition does not operate upon creditors; they are no parties thereto. *Id.*
5. What the adjudication therein assures. *Id.*
6. Title of purchaser at Orphans' Court sale, after partition among the heirs. *Id.*

**PARTNERSHIP.** See **AGENT**, 5; **CORPORATION**, 17.

1. A deed of partnership contained a clause enabling one of the partners to determine the partnership on giving to the other three months' notice. In pursuance of this clause notice of intention to determine was given. Before the expiration of the three months the partner who gave the notice died. Held, that the partnership was determined by and on the death of the partner, irrespective of the notice. *Bell v. Nevin*, 181.

2. Special partner of insolvent firm cannot claim as creditor till all others are satisfied. *Hayes v. Heyer*, 383.

3. Otherwise where such special partner is a general partner in another firm, creditor of the first. *Id.*

4. Settlement of a double partnership, owning lands, on death of a partner in both firms. *Shearer v. Paine*, 442.

**PATENT.** See **LAND LAW**, 2.**PAYMENT.** See **CHECK**, 3; **DEBTOR AND CREDITOR**, 16, 22, 32; **INTEREST**, 8-10; **LIMITATION**, 5; **PLEADING**, 5.

1. When payment made upon an existing debt cannot be recovered back. *Bronson v. Rugg*, 572.

2. Must be actual appropriation to debt to become payment. *Id.*

**PENALTY.** See **MUNICIPAL CORPORATION**, 25, 26; **STAMP**, 2, 3; **STATUTE**, 1, 2.**PHYSICIAN.** See **EVIDENCE**, 13, 16, 23; **NEGLIGENCE**, 9, 10.**PLAN.** See **COVENANT**, 1.**PLANTS.** See **DEED**, 13; **LANDLORD AND TENANT**, 4.**PLEADING.** See **MALICIOUS PROSECUTION**.

1. No system of, will justify or require an instruction contrary to law. *United States v. Dashiell*, 442.

2. Plea going to but part of cause of action, no plea in bar. *Id.*

3. Counter claim requiring a reply. *Thompson v. Sickles*, 124.

4. Joinder of causes of action for restitution of property of a judgment-debtor. *Palen v. Bushnell*, 124.

5. Payment since bringing suit, to be pleaded in bar. *Dana v. Session*, 383.

6. Or admissible only in mitigation of damages. *Id.*

7. How made concise, simple, and accurate. *Drew v. Potter*, 571.

8. Precedent for count in malicious prosecution given in 2 Ch. Pl. 611, defective in substance. *Id.*

9. What plea of a former adjudication, must show. *Railroad Co. v. Watson*, 716.

10. Plea that testator had been adjudged insane, and that guardianship existed over him at time of making will, insufficient upon demurrer. *Robinson's Estate*, 720.

11. Bad plea of the statute to a new count on a witnessed note. *Dana v. McClure*, 564.

12. Plea of the statute in indebitatus assumpsit. *Id.*

13. Cannot traverse character of party set out in pleading, unless denied under oath—Rev. Code Miss. art. 237, p. 518. *Safford v. Barnes*, 506.

14. Whether defendant is a corporation, upon matter dehors the record, must be raised by plea in abatement. *Express Co. v. Haggard*, 124.

15. Plea in abatement must give plaintiff a better writ. *Id.*

**PLEADING.**

16. In debt against one, on a judgment against three the nonjoinder may be pleaded in abatement. *Judge of Probate v. Webster*, 318.
17. When plea in abatement, to capacity of officer serving the writ, held defective. *Smith v. Chase*, 573.
18. An addition in the return of officer's capacity not conclusive. *Id.*

**PLEDGE.** See **BILLS AND NOTES**, 10-12.**POSSESSION.** See **ENTRY**; **LAND LAW**, 3, 4; **MORTGAGE**, 16-19; **REAL ESTATE**, 5.**POST OFFICE.**

1. Power of Postmaster-General to establish and discontinue post offices. *Ware v. U. S.*, 638.
2. When he may exercise the power. *Id.*

**POWERS.**

1. Power of sale in a deed of trust, executed by sheriff. His authority and effect of his deed. *McKnight v. Wimer*, 253.
2. Notice of execution of power of sale under a deed of trust. *Barnard v. Duncan*, 254.

**PREMISES.** See **DEED**, 15.**PRESCRIPTION.** See **ENTRY**, 2; **HIGHWAY**, 5.

Enjoyment of mill property under a prescriptive right cannot be disturbed or restrained, except on the ground of public nuisance. *City v. Erickson*, 123.

**PRESIDENT.** See **CONSTITUTIONAL LAW**, 31.**PROHIBITION.**

1. Writ of, can only be used to prevent doing of some act. *U. S. v. Hoffmann*, 442.
2. When it will not be issued to a court. *Id.*

**PROMISSORY NOTE.** See **BILLS AND NOTES**.**PUBLIC ENEMIES.** See **TRUSTS**, 1.**PUBLIC LANDING.** See **ENTRY**; **HIGHWAY**, 1-4.**QUO WARRANTO.**

1. Attorney-General has control of proceedings to try right to a public office. Relator and defendant cannot stipulate about facts. *People v. Chapman*, 319.
2. Persons claiming different offices in church cannot join as relators in one proceeding against adverse claimants. *People v. Demill*, 319.
3. What an information filed to try right to an office in a corporation, should set forth. *Id.*
4. Venue of, to try right to a county office. *People v. Cicotte*, 639.

**RAILROAD.** See **COMMON CARRIER**, 4-6; **CONSTITUTIONAL LAW**, 1, 2; **CRIMINAL LAW**, 24.

1. A MATTER FOR NATIONAL SUPERVISION, 193.
2. Where title to land upon which railroad has been located passes to company, before payment of damages. *Knapp v. McAuley*, 573.
3. Right of passengers purchasing connecting tickets over two lines, to use one, stop off the train, and use other afterwards. *Brooke v. Railway*, 639.
4. How far, may exempt themselves by agreement from liability for injuries to passengers using a free pass. *Railroad Co. v. Read*, 125.
5. Cannot stipulate against gross negligence or wilful misfeasance. *Id.*
6. Passenger using free ticket, assents to the terms on which it was given, and same becomes an agreement. *Id.*
7. Conductor of street car may exclude persons likely to be offensive or annoying to other passengers. *Vinton v. Railroad Co.*, 62.
8. When liable for an expulsion from cars by a servant of the company. *Railroad Co. v. Baum*, 717.

## RAILROAD.

9. Responsibility of, for act of conductor putting person off a freight car, while in motion. *Holmes v. Wakefield*, 573.
10. Liability of, undertaking to carry live animals. *Id.*
11. Damages, in an action for failure to deliver them on a certain day. *Id.*
12. Though in Pennsylvania a railroad company is not bound to fence its track to keep off cattle, yet, as between it and its passengers, it takes the risk of injury to them from that cause. *Railroad Co. v. Chenowith*, 93.
13. The conductor and freight agent of a railroad passenger train, in violation of the regulations of the company, consented to the attachment of a private freight car, under charge of its owner and with an agreement not to be held answerable for any injury resulting from the arrangement. An accident took place, not arising from such act, by which the owner of the private car received personal injury: *Held*, that the agreement was not so clearly beyond the powers of the company's servants that their disobedience of the regulations would be a defence in an action by the owner of the private car for damages. *Id.*
14. The attachment of the car was too remote a cause of the injury to be a defence on the ground of contributory negligence. *Id.*
15. The owner of the private car was a passenger. *Id.*
16. A passenger who leaves his proper place in the car cannot recover for an injury if it was in any degree the result of such act; but if his position was not in any manner the cause of the injury it will not prevent his recovery, and on this point the verdict is conclusive. *Id.*
17. Where the defendant (a railroad company) has, by its own act, obstructed the view of travellers upon the public highway by piling its wood so that the approach of the train to the crossing cannot be seen until the traveller is upon the track, one who has driven upon the track with due care, and looked for the train as soon as looking could be of service, will not be deemed guilty of negligence in not first stopping his team to ascertain if a train might be approaching. *Mackay v. Railroad Co.*, 413.
18. If in such case the traveller is killed or injured by a collision with the cars upon such crossing, the company will be deemed guilty of negligence, and held answerable therefore. *Id.*
19. A ferry-boat or other means to cross a body of water on the line of a railroad, whether in the middle or at the end of the route, is part of the necessary property of the railroad; and the company is liable for neglect to carry a passenger across this, as well as any other part of the route. *Wheeler v. Railroad Co.*, 606.
20. It is settled that a railroad company may contract to carry passengers or freight beyond its own route, and the liability as a common carrier continues through the whole distance contracted for. *Id.*
21. Railroad company liable for injuries to articles at their depot, if they have accepted and taken charge of them. *Merritt v. Railroad*, 62.
22. Railroad company receiving goods at freight-house, does so for transportation, and is liable as a common carrier. *Coyle v. R. R. Co.*, 505.
23. No legal presumption of negligence when crops fired by engine. Defendant's want of care must be shown as a matter of fact. *Smith v. Railroad Co.*, 62.
24. Where defendant's negligence is so gross as to show a disregard of consequences, or wilfulness to do injury, plaintiff may recover, though a trespasser. *R. R. Co. v. Adams*, 718.
25. Omission by railroad company to give signals required by statute, near highway crossing, is a breach of duty. *Ernst v. Railroad Co.*, 253.
26. Is an assurance by company to traveller that no engine is approaching. *Id.*
27. When passer by is guilty of culpable negligence, and forfeits claim to redress. *Id.*
28. How far bound to stop and look up and down track. *Id.*
29. Ordinarily, question whether party injured was free from culpable negligence, is one of fact for the jury, under instruction. *Id.*
30. When nonsuit is matter of right in such case, and when question of negligence to be submitted to the jury. *Id.*

**RAILROAD.**

31. Connecting railroads are either those which have such a union of tracks as will admit the passage of cars from one to the other; or, those which have such an intersection as will admit the convenient interchange of freight and passengers at the point of intersection. *Railroad Co. v. Railroad Co.*, 231.

32. Therefore the Catawissa and the Atlantic and Great Western Railroads are *connecting* roads, though the difference in gauge prevents the transfer of cars from the track of one to that of the other. *Id.*

33. A private party not authorized to represent the Commonwealth, has no right to question the corporate existence, *de jure*, of a railroad company acting as a corporation under the laws of this state. *Id.*

**RAPE.** See **CRIMINAL LAW, VIII.****REAL ESTATE.** See **AGREEMENT; HEIR.**

1. Neither at the common law, nor by the statutes of Ohio, can a conveyance of real estate be sustained unless there is a valuable or good consideration named in the deed. *Thompson v. Thompson*, 26.

2. A pecuniary consideration is essential to uphold a deed of bargain and sale. The consideration of love and affection is sufficient to uphold a covenant to stand seised to uses. *Id.*

3. In the latter case, the grantee must be of the blood of the grantor; consanguinity, not affinity, is the rule. Thus, a deed to a son-in-law for the love the grantor bears to the grantee and his wife, there being no grant to the wife, is not sufficient to sustain the conveyance. *Id.*

4. Conveyances of real estate in Ohio partake of the nature of feoffment, bargain and sale, and covenants to stand seised to uses. The usual form embodies parts of all these assurances, but neither controls, absolutely, the grant. *Id.*

5. Possession of land by a grantor, as notice of equities in him against his own conveyance. *Dawson v. Bank*, 638.

**REAL ESTATE BROKER.**

1. The duty of a real estate broker consists in bringing the minds of the vendor and vendee to an agreement concerning the sale. *Barnard v. Monnot*, 209.

2. Therefore, where the parties are brought together by the broker and agree upon a sale at a certain price and upon certain terms of payment, the broker has earned his commissions, though the sale afterwards fails through the unwillingness of the party who employed him to fulfil his bargain. *Id.*

3. It is not necessary that a binding contract, in writing, should be entered into by the parties, before the broker becomes entitled to commissions. *Id.*

**REBELLION.** See **CONSTITUTIONAL LAW, 49; INTEREST, 1, 2; LIMITATION, 1-4; TRUST AND TRUSTEE, 1.****RECEIPT.**

Of money in settlement of damages for injury, good unless signature procured through mistake or fraud. *Curley v. Harris*, 61.

**RECEIVER.** See **INTEREST, 12.****RECORD.**

When truth of magistrate's record of a criminal case cannot be impeached. *Kelly v. Dresser*, 63.

**RECORDING ACTS.** See **VENDOR AND PURCHASER, 3, 4.****RELIGION.** See **CONSTITUTIONAL LAW, 64.****REMOVAL OF CAUSES FROM STATE TO UNITED STATES COURTS.**

See **CONSTITUTIONAL LAW, 38; COURTS, 9-11.**

**RENT.** See **LANDLORD AND TENANT, 2, 6, 9.****REPLEVIN.**

1. In the *cepit*, can only be brought for injury to property in possession of the plaintiff. *Stockwell v. Phelps*, 127.

## REPLEVIN.

2. Amount of damages in, upon recovery by sheriff. *Buck v. Remsen*, 125.
3. Will not lie against common carrier for detention of goods, coming lawfully into his possession. *Woodward v. Railway Co.*, 384.

## REVENUE ACTS. See INTERNAL REVENUE.

## REVERTER. See CONDITION, 1.

## RIPARIAN OWNER. See RIVER.

## RIVER. See NUISANCE, 7; WATERCOURSE, 1.

1. Meaning of navigable river at common law. *Magnolia v. Marshall*, 510.
2. Fresh-water streams belong to riparian proprietors, subject to easement in public to navigate such as are in fact navigable. *Id.*
3. A grant of land, bounded by such a stream, conveys soil *usque ad medium filum aquæ*, and of course shore between high and low water mark. *Id.*
4. Navigator on fresh-water streams cannot land on shore, nor approach stream over land of riparian owner. *Id.*
5. Riparian owner may charge for use of the shore. *Id.*
6. Mississippi river not navigable above tide-water. Subject to law of fresh-water streams. *Id.*
7. Cases on subject of navigable streams and fresh-water streams collected and reviewed. *Id.*

## SALE. See DEBTOR AND CREDITOR, I.; VENDOR AND VENDEE; WARRANTY, 1-4.

1. A voluntary sale of chattels, to affect vendor's creditor, must be accompanied by an actual change of possession, and the possession must continue in the purchaser. *Barr v. Reitz*, 693.
2. Where actual delivery does not attend the sale, it is fraudulent *per se*, and the court is bound to tell the jury so. *Id.*
3. The burden of proving the delivery lies on the purchaser, who must establish his possession by sufficient evidence. *Id.*
4. But in considering the question what is an actual delivery, the nature of the property, and circumstances attending the sale, must be taken into account. *Id.*
5. The principle underlying all the cases is, that there must be an actual separation of the property from the possession of the former owner at the time of the sale, or within a reasonable time afterwards, according to the nature of the property delivered. *Id.*
6. Where one about to move away sold, by bill of sale, his household goods to a creditor commencing housekeeping, and delivered the key of the house to the purchaser, receiving credit to the amount of the claim due, and cash for the balance of the sale, and moved away, it was error in the court to pronounce the sale a legal fraud. The question of possession should have been left to the jury. *Id.*
7. Of chattels, not impracticable to move is voidable by creditors, if not accompanied by change of possession. *Houston v. Howard*, 438.
8. How a manifest and substantial change of possession, determined. *Id.*
9. What does not amount to. *Id.*
10. Validity of attachment of goods, against vendor. *Id.*
11. Sale of property, exempt from execution in Kentucky. What it passes. *Anthony v. Wade*, 439.
12. Such a sale no fraud. *Id.*
13. Two papers, each signed by one party, may be submitted as evidence of a written contract of sale, signed by both. *Rhoades v. Castner*, 320.
14. Liability from sale of a dangerous article. *Davidson v. Nichols*, 189.

## SCRIP. See MUNICIPAL CORPORATION, 4.

## SCENERY. See MUNICIPAL CORPORATION, 24.

## SEAMAN. See SHIPPING, 1, 2.

SEARCHES. See JUDGMENT, 14-17.

SECURITY. See BILLS AND NOTES, 10.

SEDUCTION.

1. In action for, loss of service must be averred and proved. *Ingersoll v. Miller*, 443.
2. Proof necessary therein. *Id.*
3. What amount is sufficient. *Id.*
4. Must be pregnancy, ill-health, or injury to give right of action. *Id.*
5. Requirement of actual loss or injury in such case. *Id.*
6. When proof of actual loss not required. *Id.*
7. Damages therein. *Id.*

SERVICE. See PLEADING, 17.

Meaning of the words "in actual military service." *Leathers v. Green-acre*, 533, 692; *Gould v. Safford's Estate*, 775.

SET-OFF. See LANDLORD AND TENANT, 6.

SHERIFF AND SHERIFF'S SALE. See ACTION, 2, 3; DEBTOR AND CREDITOR, 15; REPLEVIN, 2.

1. Object of the sixty days allowed sheriff to execute and return process of execution. *Renaud v. O'Brien*, 255.
2. When a creditor's bill can be maintained, after return of *nulla bona*, but within the sixty days. *Id.*
3. Carelessness in a purchaser at sheriff's sale. *Waldron v. Letson*, 571.

SHIPPING.

1. Sailors on the lakes are merchant seamen, and are entitled in a proper case to be cured at the expense of the vessel, if taken sick or hurt without their fault, while in the service of the vessel. *Morgan v. Schooner*, 707.
2. When a sailor takes advantage of the rate of wages before shipping on a short voyage on the lakes, and receives a hurt on entering the port of discharge, without any fault or neglect of the officers, and he takes his discharge and his full pay, and afterwards contracts a debt for medicine, &c., the vessel is not liable. *Id.*
3. When bill of lading not conclusive evidence of the course of proposed voyage. *Cobb v. Blanchard*, 126.
4. Bill of lading can be transferred by delivery merely, without indorsement. *Bank v. Wright*, 126.
5. Rights of the *bond fide* transferee of bill of lading. *Id.*
6. A bill of lading, so far as it is a receipt, is open to explanation, and the carrier may show that the amount which actually came into his hands is different from that stated in the bill. *Strong v. Railway Co.*, 680.
7. This rule is subject to qualification where third persons have acquired rights by purchase, or advance of money based upon statements contained in the bill. *Id.*
8. An intermediate consignee, by whom property is received subject to back charges, is liable to an action therefor in case of neglect or refusal to make payment. *Id.*
9. Neither the intermediate nor the final consignee can deduct from the freight earned by the prior carrier the value of any difference between the amount delivered to him and that receipted for in the bill of lading, where the carrier can show an error in the bill, and that he actually delivered all that he received. *Id.*
10. A custom for intermediate consignees to make such deductions is uncertain, unreasonable, and void. *Id.*
11. Even if such custom was valid, an action would lie against the intermediate consignee to recover the amount of such deduction, unless he had paid over the money, or in some manner changed his legal position relative to the owner with respect to the money after making the deduction. *Id.*
12. Liability of consignee for demurrage. *Gage v. Morse*, 574.
13. Consignee not liable for demurrage, if bill of lading contain no provision for its payment. *Gage v. Morse*, 719.

## SHIPPING.

14. In action against owners for supplies on captain's order, plaintiff must show that they were necessary. *Ford v. Crocker*, 719.
15. Captain is to decide as to what is necessary. *Id.*
16. Vendors may rely upon his decision. His order for the goods is sufficient. *Id.*
17. Amount for which carrier is liable for loss to cargo, happening before and after commencement of the voyage. *Krohn v. Oechs*, 714.
18. Authority of master to contract for lighting channel. *Strong v. Saunders*, 639.

## SLANDER.

1. Defendant's wealth may be considered by jury in assessing damages. *Humphries v. Parker*, 184.
2. When jury not restricted to nominal damages. *Markham v. Russell*, 574.
3. Defence that explanatory matter accompanied the slanderous words must show that the explanations accompanied the words and were sufficiently explicit to do away with the charge the words imputed. *Van Akin v. Caler*, 775.

SLAVERY. See BILLS AND NOTES, 9 ; WARRANTY, 8.

SOCIETY. See CORPORATION, 6-9.

SOLDIER. See WILL, IV.

SOUND. See EVIDENCE, 36.

SOVEREIGNS. See GOLD COIN, 2.

SPECIFIC PERFORMANCE. See EQUITY, 1-6.

STAMPS. See CONSTITUTIONAL LAW, 41.

1. Stamping in the presence of the court under Act of June 30th 1864, not repealed by law of March 3d 1865. *Garland v. Lane*, 255.
2. Penalty not incurred by accidental omission to affix. *Hitchcock v. Sawyer*, 775.
3. When penalty under Act of June 30th 1864 for failure to affix a stamp, is incurred and instrument invalidated. *Reeve v. Hutton*, 574.
4. When an unstamped instrument may be read in evidence. *Id.*
5. May show that insufficiency of the stamp arose from inadvertence or mistake and without intent to evade stamp duty. *Id.*
6. Collector cannot devolve duty of affixing stamp in above case, upon his deputy. *Id.*
7. Officer's return of mesne process, not a certificate, requiring. *Graves v. Clay*, 384.
8. Bond, given on an appeal, does not require. *Violet v. Heath*, 719.
9. Officer's certificate to a deposition, not liable to stamp duty. *Prather v. Pritchett*, 719.

## STATUTE.

1. Penalty annexed to an act by statute, implies its prohibition thereby. *Carpenter v. McClure*, 440.
2. When first statute imposing a penalty, is and is not repealed by enactment of a second, varying the punishment. *Dolan v. Thomas*, 506 ; *Carter v. Burt*, 506 ; *Flaherty v. Thomas*, 507.
3. Effect of change of collocation of parts of a statute upon their construction. *Clement v. Kaighn*, 575.

## STEAMBOATS.

1. Act of Congress, 30th August 1852, for security of passengers' lives on, does not exempt owners from liabilities imposed by legal relationship between them and passengers. *Swarthout v. N. J. Transp. Co.*, 190.
2. Common law redress not superseded thereby. *Id.*
3. Certificate of inspection of boilers, will not exonerate owners from liability in an action for injury from explosion. *Id.*
4. Plaintiff may recover damages for bodily pain and suffering. *Id.*

STOCK. See CORPORATION, 10-14; DAMAGES, 2.

STOCKHOLDER. See CORPORATION, II.

STREET. See HIGHWAY; MUNICIPAL CORPORATION, 24-27; WAY.

SUBSCRIPTION. See ASSUMPSIT, 2, 3; CORPORATION, 25-30.

SUNDAY.

1. Trials by associations, on Sunday. *Society v. Comm'th.*, 634.
2. Jews bound to observe civil regulations for keeping. *Id.*

SURETY. See COVENANT, 2; GUARDIAN.

1. Forbearance, without binding agreement, will not exonerate. *Van Rensselaer v. Kirkpatrick*, 190.
2. Such agreement not binding, without valid consideration. *Id.*
3. Payment of instalments, no such consideration. *Id.*
4. To discharge, creditor must do some act to deprive himself of right of proceeding at law against principal. *Rucker v. Robinson*, 255.
5. Not discharged by discontinuance of attachment against principal. *Barney v. Clark*, 445.
6. When payee of note not estopped from collecting it, of surety, by information communicated to him. *Id.*
7. Liability of surety of a teller of a bank for a default, when teller already a defaulter at time of bond entered. *Wayne v. Bank*, 631.
8. When default of principal forfeits the bond as to him, it does so, as to surety. *Id.*
9. Liability of, for money stolen from a public officer. *U. S. v. Dashiell*, 575.
10. Effect of reversal of judgment against principal upon judgment against surety. *U. S. v. Allsbury*, 575.
11. When bond perfect and unconditional upon its face cannot be avoided by sureties on ground that they signed the same upon certain conditions. *State v. Peck*, 575.
12. Admissions of principal as evidence against. *Bank v. Smith*, 511.
13. Liability of, upon a several bond with others. *Id.*
14. When interest on penal sum may be added by way of damages, as against surety. *Id.*

SURGEON. See NEGLIGENCE, 9, 10.

TAXATION. See EQUITY, 18; CONSTITUTIONAL LAW, 16, II., IV., VII.

1. Power of state over taxation of land. *Witherspoon v. Duncan*, 445.
2. Lands entered at land office, liable to, and may be sold for. *Id.*
3. Right to tax attaches to donation entries. *Id.*
4. Exemption from state taxation of steamship company engaged in foreign commerce and carrying United States mails. *Steamship Co. v. Commissioners*, 719.

TELEGRAPH COMPANY.

1. How far they may limit their liabilities. *Wann v. W. U. Telegraph Co.*, 63.
2. May require message to be repeated. *Id.*

TENANT IN COMMON. See PARTITION, 1; TROVER, 3.

1. One, cannot convey by metes and bounds a part of the tract. *Prim v. Walker*, 255.
2. But such deed will bind him by estoppel. *Id.*
3. What admixture of grain will not make. *Morgan v. Gregg*, 191.
4. Mere admixture will not necessarily produce tenancy in common. *Id.*

TENDER. See DEBTOR AND CREDITOR, II.

TEXAS.

Application of Mexican Colonization Act of 1824 to. *Christy v. Pridgeon*, 437.

TITLE. See AGENT, 9; EJECTMENT; ENTRY; MORTGAGE, 15; PARENT; PARTITION, 3; PRESCRIPTION; VENDOR AND VENDEE, 1, 22-27.

**TORT.** See **DEBTOR AND CREDITOR**, 9, 10; **OFFICE**, 3-5; **TRESPASS**, 7; **TRUST**, 3.

**TOWN.** See **MUNICIPAL CORPORATION**.

**TREASURY NOTES.** See **CONSTITUTIONAL LAW**, I.; **DEBTOR AND CREDITOR**, 22.

**TRESPASS.** See **CONSTITUTIONAL LAW**, 59; **DAMAGES**, 6; **EXECUTORS AND ADMINISTRATORS**, 12; **MASTER AND SERVANT**, 5.

1. All who aid in, are principals. *Green v. Kennedy*, 127.

2. One directing imprisonment of another is guilty thereof. *Id.*

3. Fact that officer who directed it violated his duty in so doing, no defence. *Id.*

4. The Illinois Statute of Forcible Entry and Detainer, by necessary construction, forbids a forcible entry, even by the owner, upon the actual possession of another. Such entry is, therefore, unlawful, and is a trespass for which an action of trespass will lie. *Reeder v. Purdy*, 104.

5. Where an action of trespass is brought for a mere entry by a landlord upon the possession of a tenant holding over, unaccompanied by any trespass upon either the person or personal property of the plaintiff, and merely constructively forcible, only nominal damages can be recovered; the *gravamen* of actions of this character being the trespass to the person and goods and chattels of the tenant. *Id.*

6. The cases relating to the common-law right of an owner of land to enter forcibly upon the unlawful possession of another, collected and discussed. *Id.*

7. Action of tort, in nature of *quare clausum fregit*, is a personal action. *Way v. Dame*, 126.

8. In what county, may be commenced. *Id.*

**TRIAL.** See **IMPEACHMENT**.

1. By an association, for offence against its laws. *Society v. Comm'th.*, 634.

2. Rule of court confining party to grounds of defence set forth in specification filed with clerk not repugnant to law. *Fox v. Ins. Co.*, 254.

3. Such specifications of defence may be amended. *Id.*

4. Plaintiff need not show allegations, not so denied. *Id.*

**TROVER.** See **HUSBAND AND WIFE**, 27.

1. An absolute refusal to a demand, precludes setting up matter of excuse therefor, on the trial. *Albee v. Cole*, 716.

2. Mere negligence by which property is damaged is not legal conversion. What is necessary to make conversion. *Tinker v. Morrill*, 775.

3. Failure of a tenant in common to divide logs and claiming to own them exclusively, is conversion and other may sue in trover. *Ripley v. Davis*, 320.

**TRUST AND TRUSTEE.** See **CORPORATION**, 13; **DISCOVERY**.

1. Real estate in Kentucky was sold under an execution during the rebellion. The owners were residents of Mississippi, a state at war with the United States. A. having deterred other purchasers by announcing that he was bidding for the owners, bought the land for half its real value, and afterwards sold and conveyed it to B. for double the price he had paid, and claimed to hold the proceeds for his own use: *Held* that A. could not be considered a trustee for the owners by parol on account of the Statute of Frauds, nor by any form of contract, express or implied, because the owners were then public enemies. *Hord v. Crutcher*, 165.

2. The question whether or not B. had notice of A.'s announcement at the sale was therefore immaterial, and his title to the land valid. *Id.*

3. But the owners might recover from A., as his acts did not constitute a contract but a tort, as to which the right of action was only suspended by the war. *Id.*

4. The measure of damages is the advance A. received on his resale, allowing him interest on his payment, and reasonable commissions. *Id.*

5. When purchaser under foreclosure sale, will be deemed a trustee for the mortgagor. *Ryan v. Dox*, 122.

6. On tender of purchase-money and interest, he will be compelled to convey. *Id.*

## TRUST AND TRUSTEE.

7. Immaterial that the agreement to purchase was not in writing. Law makes him a trustee *ex maleficio*. *Ryan v. Dox*, 122.
8. Interest of cestui que trust cannot be impaired by voluntary act of trustee in breach of trust. *Smith v. Bowen*, 255.
9. Transfer of trust estate, without any consideration, to one, with notice thereof, fraudulent as to beneficiaries. *Id.*
10. Interpretation of trust devising estate to a class, with power of selection and discretion in its disposition. *City v. Shackford*, 446.
11. When Court of Equity will not interfere with trustee's exercise of power. *Id.*
12. Effect of trustee's death, before exercise thereof. *Id.*
13. What was no abuse of trustee's discretion. *Id.*

UNITED STATES COURTS. See ADMIRALTY; COURTS, II.

UNITED STATES NOTES, STOCKS, ETC. See CONSTITUTIONAL LAW, I.

USE AND OCCUPATION. See DEBTOR AND CREDITOR, 33; LANDLORD AND TENANT, 10, 11.

USURY. See BILLS AND NOTES, 12, 13; INTEREST; MUNICIPAL CORPORATION, 12.

VENDOR AND PURCHASER. See SALE.

I. *Of Real Estate.*

1. A purchaser by payment of price, acquires the entire equitable title; vendor has no real interest. *Fonda v. Sage*, 64.
2. Effect of subsequent conveyance by vendor. *Id.*
3. What constitutes a *bonâ fide* purchaser within the meaning of the recording acts. *Webster v. Van Stanbergh*, 192.
4. Requirements only apply to original purchaser. *Id.*
5. Purchasers under him protected, though with notice. *Id.*
6. Second purchaser without notice protected, though his vendor had notice. *Id.*
7. What possession of premises will operate as constructive notice. *Id.*
8. What is necessary on the part of the vendor before ejection, where purchaser has made default under an executory contract. *Hotaling v. Hotaling*, 511.
9. If no agreement as to time, balance of purchase-money under parol contract due upon possession taken. *Id.*
10. Purchaser entering without, is in default. *Id.*
11. Whether demand be necessary to sustain ejection in such case, and effect of demanding too much. *Id.*
12. Vendor may reserve an assignable right of taking water from a spring, without being annexed to any particular estate. *Goodrich v. Burbank*, 720.

II. *Of Chattels.* See DEBTOR AND CREDITOR, 1.

13. The rules of law deduced from the maxim *caveat emptor*, have reference generally, and more particularly, to the condition of personal property sold by one party to another. *Clark v. Rankin*, 368.
14. The general rule is, that the purchaser is bound to examine and ascertain the defects in the thing sold, and unless there is some misrepresentation or artifice to disguise it, or some warranty as to its qualities or character, the vendee is bound by the contract, notwithstanding there may be intrinsic defects and vices in it, known to the vendor and unknown to the vendee materially affecting its value. *Id.*
15. The maxim of *caveat emptor* has no application to cases of *actual successful fraud* practised by the vendor upon the vendee. *Id.*
16. The question whether the vendee was actually deceived is always open. If he was not deceived by the representations or acts of the vendor, though they were false, then he has no cause of action. *Id.*
17. On a sale of certain leases by the defendant to the plaintiffs, the former stated that the property rented for \$4000 yearly, and a written statement was

## VENDOR AND PURCHASER.

produced by the defendant of the rents to be received from the property, footing at about that amount. Among the leases therein specified was one for ten years, at a yearly rent of \$600. Nearly seven years and ten months of the term was expired. In fact, the rent to accrue upon that lease, thereafter, was only \$111.11 annually, the sum of \$5000 having been already paid upon such lease, and indorsed thereon, according to the terms of payment specified therein. *Held*, that the plaintiffs having been actually deceived and defrauded by means of such representation, an action lay for damages. *GROVER*, P. J., dissenting. *Clark v. Rankin*, 368.

18. *Held*, also, that the plaintiffs had a right to rely upon the representations made by the defendants that the rents reserved amounted to \$4000 annually, and that to make up this sum, the annual rent on the railroad lease was \$600. *Id.*

19. That, in other words, the omission of the plaintiffs to examine the lease and the receipts upon it, was not such negligence as would deprive them of a right of recovery. *Id.*

20. That the facts being established by the undisputed evidence, the question whether the omission of the plaintiffs to examine the railway lease involved such a want of care and prudence as to defeat their right to recover, was a question of law to be decided by the court, and should not have been submitted to the jury. *Id.*

21. What is required to avoid a purchase of goods by reason of fraud, and prevent change of ownership, so as to subject the same to claim of the vendor. *Stoutenburgh v. Konkle*, 575.

22. A purchase with fraudulent design of subjecting goods to executions of friends, affords clear case for relief. *Id.*

23. No title to goods passes when possession is obtained by gross fraud. *Id.*

24. Vendor in a cash sale can reclaim the goods, upon refusal of vendee to pay for same, and no title passes. *Id.*

25. But if vendor affirm the contract by attempting to secure the price, he is not entitled to relief against other creditors. *Id.*

26. When no property passes between, upon sale of one kind of property and delivery of a wholly different kind. *Gardner v. Lane*, 384.

27. Agreement to purchase wheat, and payment of price without separation, manual delivery, bill of sale, or order on keeper of elevator, no transfer of title. *Rodee v. Wade*, 447.

28. When purchaser entitled to defend as one *bona fide*, for value and without notice of prior equities. *Downer v. Bank*, 448.

29. Right of party in possession, claiming adversely to others, to sell hay to third party. *Stockwell v. Phelps*, 127.

30. Admixture merely will not transfer ownership. Owner may take from common bulk. Denial of his right and refusal to permit it, is conversion. *Morgan v. Gregg*, 191.

31. In a sale for cash on delivery, demand of price from purchaser's agent, receiving goods, sufficient. *Id.*

32. Waiver of cash payment by vendor. *Id.*

VENUE. See *QUO WARRANTO*, 4.

VESSEL. See *LIEN*, 3; *SHIPPING*, 14, 16.

VOUCHER. See *Covenant*, 3, 4.

WAIVER. See *BILLS AND NOTES*, IV.; *INSURANCE*, 6-10.

WAR. See *INTEREST*, 1, 2; *LIMITATION*, 1-4.

WAREHOUSEMAN. See *COMMON CARRIER*, 15.

WARRANTY. See *Covenant*, 3, 4.

1. Where a manufacturer keeps his wares ready made for sale to customers, he stands in the same relation to a purchaser, as to warranty, as any other merchant selling the same article. There is no implied warranty of quality arising from the mere fact that the seller is also the maker. *Sanborn v. Herring*, 457.

2. Where a manufacturer of burglar-proof safes exhibits two safes differing

**WARRANTY.**

in price, and the customer takes the cheaper one upon the assurance that it is equally secure as a protection against burglars, which proves to be untrue, the purchaser may recover the difference between the value of the safe as it was and the value of such a safe as it was represented to be. *Sanborn v. Herring*, 457.

3. But if a safemaker sells a safe with an express warranty that it is burglar-proof, or upon representations to that effect fraudulently made to the purchaser, with intent that they should form part of the contract, the purchaser may recover the value of the money or goods lost by the breaking and robbing of his safe. *Id.*

4. Question of warranty in the sale of safes, considered. *Note to Sanborn v. Herring*, 464.

5. Merchandise broker no authority to warrant goods to be of merchantable quality. *Dodd v. Farlow*, 127.

6. Evidence of such usage, inadmissible. *Id.*

7. Validity of memorandum, with such warranty. *Id.*

8. Effect of ordinance abolishing slavery upon covenant warranting slave, so for life. *Phillips v. Evans*, 248.

**WATERS AND WATERCOURSES.** See **VENDOR AND PURCHASER**, 12.

1. One wrongfully damming river and raising water, liable in nominal damages, though no actual injury. *Amoskeag Co. v. Goodale*, 256.

2. Right of a corporation erecting dam on its own land, to overflow land of another. *Id.*

**WAY.** See **MUNICIPAL CORPORATION**, 24, 27.

1. Use of an uninclosed alley in a city by adjoining lot-owner, as notice of exclusive right thereto. *Gordon v. Sizer*, 512.

2. There cannot be possession of a way, necessary in law, to constitute notice. *Id.*

3. Effect of a recovery in ejectment by owner of the fee upon defendant's right to use the way according to his title. *Id.*

**WILL.** See **EVIDENCE**, 27-29.**I. Execution and Probate.**

1. The proponent of a contested will must produce and examine all the attesting witnesses if in his power to do so. *Thornton v. Thornton*, 341.

2. The English rule required all subscribing witnesses to be examined, unless dead, insane, absent from the state, or subsequently incompetent. *Id.*

3. Foundations of this rule. When the will should be admitted to probate. *Id.*

4. A will may be probated without the testimony of the subscribing witnesses *in its favor*. The necessary facts may be proved by others. *Id.*

5. The proponent may impeach a subscribing witness, whom he was obliged to call, upon matters brought out on cross-examination. *Id.*

6. Upon what, the testimony of a subscribing witness, as to sanity is founded. How weighed and valued. *Id.*

7. Not error for the court to refuse to charge that the testimony of an attesting witness against decedent's sanity created a strong presumption against the validity of the will. *Id.*

8. When a draft of a will may afford "very considerable light" upon testator's intention. Is evidence upon questions of capacity and undue influence. *Id.*

9. Effect of legacies made upon the suggestion of another, upon the question of capacity. Proper manner for the court to charge, upon testamentary capacity. *Id.*

10. A party cannot insist that the court shall collate certain conceded facts, isolate them from others and charge distinctly thereupon to infer undue influence. How the court should charge upon this question. *Id.*

11. Common law rule for proof of, by subscribing witnesses. *Note to Thornton v. Thornton*, 358.

12. What is not a sufficient attestation. *Chase v. Kittredge*, 64.

13. When codicil to will may be admitted to probate subsequently to probate of will. *Waters v. Stickney*, 384.

## WILL.

II. *Testamentary Capacity.* See PLEADING, 10.

14. Gross inequality, apparently unjust or unreasonable, is not alone sufficient to invalidate a will. *Kevill v. Kevill*, 79.

15. But it is entitled to weight as evidence of testamentary incapacity or undue influence. *Id.*

16. What influence in the production of a will may be regarded as undue. *Note to Kevill v. Kevill*, 82.

17. Degree of proof required to establish. *Id.*

18. Requisites of testamentary capacity. *Van Guysling v. Van Kuren*, 255.

19. Guardianship not conclusive upon ward's competency to make a will. *Robinson's Estate*, 720.

III. *Construction.*

20. The will provided, in the event of payments thereafter made by reason of certain supposed liabilities, "whether the same be paid upon judgment recovered or by compromise," that one-fifth of the sums so to be paid be charged to his son. On these liabilities suits were brought and large sums properly and judiciously expended by the executors in defending against them. *Held*, that no part of these expenses of suit could under the will be charged to the son. *Crosby v. Mason*, 13.

IV. *Soldier's Will.*

21. At common law, a will of personal property, written in the testator's own hand without seal, though no witnesses were present at its publication, is good; and no particular form of expression is material, if only the testator's intention is manifest. *Leathers v. Greenacre*, 533, 692.

22. By R. S. c. 74, § 18, "a soldier in actual service, or a mariner at sea, may dispose of his personal estate and wages," as he might have done under the common law. *Id.*

23. The terms "in actual service," and "engaged in an expedition," are synonymous. *Id.*

24. The term "expedition" is not to be confined to that movement of the troops which immediately precedes the actual conflict and shock of battle. *Id.*

25. A will made by a soldier without usual statute formalities, while in barracks, or at a military station in a loyal state, not exposed to the enemy, and before moving under orders against the foe, is not the will of a "soldier in actual service," and not entitled to probate as such. *Id.*

26. Otherwise—if he had marched into the enemy's country and was acting with soldiers confronted by the enemy, though in winter quarters and not upon any present movement of the troops. *Id.*

27. In August 1862, J. B. L. enlisted in the 1st regiment of Maine cavalry, and was thereafterwards, in the same month, mustered into the U. S. military service. March 6th 1863, while lying in camp at Stafford C. H., Va., he wrote a long letter to the defendant (with whom he had previously deposited the two notes mentioned in his letter), in which he said:—"As life is uncertain, I will give you my wishes in regard to my property, if I should fall here." "The face of the note that" G. H. L. "owes me and now in your hands, and also the note against" C. S., "and interest, I want you to distribute among my brothers and sisters as you think proper, and all other property to my wife (naming her), and for her to pay my debts," (signed.) March 2d 1864, he started on a raid to Richmond in company with others under military orders, was captured and died in prison, March 16th following:—*Held*, that J. B. L. was a "soldier in actual service," when he wrote the letter, and that it was a will entitled to probate. *Id.*

28. Nuncupative will of a soldier may be established by one witness. *Gould v. Safford's Estate*, 775.

29. What was held a good military will. *Id.*

30. What amounts to being "in actual service." *Id.*

## WITNESS. See ASSUMPSIT, 4; HUSBAND AND WIFE, 3, 37, 38; INSURANCE, 3.

1. A party may prove the facts in issue to be different from a statement of them by his own witness. *Thornton v. Thornton*, 341.

2. But he cannot introduce testimony merely to discredit his own witness,

## WITNESS.

though he has been cross-examined upon new matter. The sanity of the testator and the regularity of the signatures are branches of the same matter—the due execution of the will. *Thornton v. Thornton*, 341.

3. This rule is not inflexible. When the proponent of a will may prove a fact to be otherwise than testified to by the subscribing witness, called by himself, and impeach his credit. *Id.*

4. A party discharging but not concealing a witness cannot be asked his reason therefor. *Id.*

5. The cross-examination of a witness examined and dismissed, who returns to correct an error, may be limited strictly to the point corrected. *Id.*

6. Impeachment of subscribing witnesses to will. *Note to Thornton v. Thornton*, 358.

7. Grantor in a deed with covenants for title incompetent to prove execution of deed. *Hamilton v. Doolittle*, 128.

8. Is also incompetent to prove notice to a subsequent purchaser. *Id.*

9. Demandant in dower competent to prove her husband's death. *Flynn v. Coffey*, 318.

10. Wife incompetent, when husband's interests are directly involved, though not a party. *Young v. Gilman*, 380.

11. Competency of attorney, as witness for his client. *Braine v. Spalding*, 630.

12. True test of interest in a witness. *Id.*

13. Interest in the *question* only, will not exclude. *Id.*

14. Interest in the *question* goes only to the credit of a witness. *Ferree v. Thompson*, 640.

15. Competency of the debtor in an issue between prior and subsequent judgment-creditors, to try validity of the prior judgment. *Id.*

16. Testimony of defendant called as witness. *Spaulding v. Hallenbeck*, 316.

17. Matters about which party is excused from answering under Stats. of 1857 and 1858 in New Hampshire. *Eaton v. Farmer*, 256.

18. What he may be required to state. *Id.*

19. Farmers competent to fix price of land in their neighborhood. *Rooertson v. Knapp*, 256.

20. So, if one has changed occupation to that of mechanic. *Id.*

21. When witnesses are called to give testimony upon question of skill. *Id.*

22. Law does not presume reformation of a person of bad character. It may be shown in answer. *Rathbun v. Ross*, 128.

23. When evidence of witness's former character admissible. *Id.*

24. The record is the best evidence that witness has been convicted of felony. *Id.*

25. Parol evidence showing witness had been in state prison, inadmissible. *Id.*

26. Evidence of a particular fact cannot be resorted to, to attack witness. *Id.*

27. Swearing falsely in one particular, may be believed in other matters, otherwise corroborated. *Knowles v. People*, 639.

ZINC. See DEED, 14.